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THE

EXECUTIVE DOCUMENTS

167

PRINTED BY ORDER OF THE

SENATE OF THE UNITED STATES

FOR THE

FIRST SESSION OF THE FORTY-SIXTH CONGRESS,

1879.

IN THREE VOLUMES.

Volume 1 contains Nos. 1 to 38, inclusive, except Nos. 31 and 37.
Volume 2 contains No. 31.
Volume 3 contains No. 37 and parts.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1879.

HS
Law
1872

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TO

THE EXECUTIVE DOCUMENTS

OF THE

SENATE OF THE UNITED STATES

FOR THE

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46TH CONGRESS, 1st Session. } SENATE. { Ex. DOC. 37, Part 3.

PROCEEDINGS AND REPORT

OF THE

BOARD OF ARMY OFFICERS,

CONVENED BY

SPECIAL ORDERS No. 78, HEADQUARTERS OF THE ARMY, ADJUTANT GENERAL'S OFFICE, WASHINGTON, APRIL 12, 1878,

IN THE CASE OF

FITZ-JOHN PORTER.

TOGETHER WITH THE PROCEEDINGS IN THE ORIGINAL TRIAL AND PAPERS RELATING THERETO.

IN THREE PARTS.

PART III.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1879.

CASE OF FITZ JOHN PORTER.

1011 FORTY-NINTH DAY.

COURT-ROOM, COR. 14TH AND PA. AV.,
Washington, D. C., January 21, 1863.

The Court met pursuant to adjournment.

* * * * * * *

The witness stated that he answered one question propounded yesterday as considering it confined to General McDowell's ability and his faithfulness, and that the answer is not as general as he now finds the question requires.

The witness proceeded:

My further amendment is with reference to his integrity as a witness before the general court-martial of which I was defendant.

At the instance of a member the Court was cleared.

The Court was opened and the following decision announced:

Evidence of General McDowell's integrity as a witness on any other trial cannot be received on this inquiry, nor does the question call for such testimony.

Q. by Gen. McDowell. What was the effect on your movements of the message you state was brought to you by Colonel Locke (your chief of staff) from General McDowell, that you were to stay where you were, that he was "going to the right and would take King with him"?—A. The effect was to post my command, or a portion of the command, in line where the head of the column then was, prepared to resist the advance of an enemy in that direction, and turn a portion of the command a little back on the road. After doing this I sent messengers to General Pope informing him of the fact.

Q. by Gen. McDowell. Informing General Pope of what fact?—A. Of my present position and what there was in my front. I will say that I sent several messengers conveying, to the best of my recollection, the general information of my location, and one telling him that King's division had been taken to the right. Some of those messengers never returned to me, and I presume were captured.

Q. by Gen. McDowell. Did you receive any further message from General McDowell other than the one you state that Colonel Locke brought you, as before stated, which you considered an order?—A. None that I recollect of. I had memoranda which I sent to General Morell, and which conveys the general impression that I had received messages from General McDowell, but I have no recollection of receiving them, nor were they brought to mind till their appearance before the Court. That memoranda says General McDowell informs me all is going well on the right, or something to that effect.

Q. by Gen. McDowell. Is witness to be understood he did not on the 29th, after seeing General McDowell the second time, receive any instructions or directions or orders from General McDowell to move his troops from where he states he was directed to remain?—A. I have no recollection, and I am confident I received no message or order from him other than those that I have mentioned.

Q. by Gen. McDowell. On his march to Gainesville does witness recollect crossing the Sudley Springs road? Does he know where Bethlehem Church is?—A. I now recollect the road. I did not know it at the time I crossed it. I now know where Bethlehem Church is.

Q. by Gen. McDowell. When General McDowell saw witness the second time how far had the witness gone on the road to Gainesville beyond the Sudley Springs road?—A. To the best of my recollection it was a mile and a half or two miles—perhaps a little over two miles.

1012 Q. by Gen. McDowell. How far was it from the head of witness' column to Gainesville?—A. I do not know. I had never been over that portion of the country and have not been since.

Q. by Gen. McDowell. How far was it, in witness' opinion, from Manassas to Bethlehem Church?—A. Of those distances I have very little knowledge, very little recollection, and only know them by reference to the map.

Q. by Gen. McDowell. How long had the witness' head of column been halted when General McDowell joined him?—A. I cannot say, but not long. It had halted before I arrived there.

Q. by Gen. McDowell. Witness speaks of the effect of General McDowell's message (as brought by Colonel Locke) to have been to cause him to remain in position at the place where General McDowell first saw him. How long did witness' troops continue in this position?—A. A portion of the command remained there till daybreak the fol-

lowing morning and some till after daybreak. The most of Morell's division was on or near that ground all day.

Q. by Gen. McDowell. Did witness conceive himself prohibited from making or attempting to make any movement to the front, or to the right, or to the front and right?—A. By that direction or order, taken in connection with the joint order, I considered myself checked in advancing, especially taken in connection with the removal of King's division. I did not consider that I could move to the right, and I consider that General McDowell took King's division to form a connection on the right or to go to the right and form such a connection as was possible. I add further that I considered it impracticable to go to the right.

Q. by Gen. McDowell. Did witness *attempt* to make any movement in either of the directions above named?—A. Not directly to the right. I did to the right and front, and when I received the last message from General McDowell to remain where I was, I recalled it.

Q. by Gen. McDowell. Did you make no attempt to go to the front or the right, or the right and front, after that message?—A. I made no attempt with any body of troops. I sent messengers through there to go to General Pope and to get information from the troops on the right.

Q. by Gen. McDowell. After General McDowell left the witness, did the witness not know he was expected by General McDowell to move to the right or to the right and front?—A. I did not.

Q. by Gen. McDowell. Witness speaks of having reported to General Pope. When did witness conceive himself as no longer under General McDowell?—A. My messages were addressed to General McDowell, I think all of them. The messengers were directed to deliver them to General Pope if they saw or met him. I considered myself as limited in my operations under General McDowell's orders until I should receive directions from General Pope.

Q. by Gen. McDowell. How long was witness and General McDowell together before they moved to the right "with a view of seeing the character of the country"?—A. I do not think we were together more than four or five minutes, though I have no distinct recollection.

Q. by Gen. McDowell. How long were they together after moving to the right?—A. It may have been ten or twelve minutes, perhaps longer.

Q. by Gen. McDowell. Witness refers to some conversation between himself and General McDowell when they first met, which, taken in connection with an expression of opinion by General McDowell, witness considered an order. Can the witness state what that conversation was?—A. I only recollect the impression left upon my mind at the time, and merely a reference to the artillery contest going on far to our right.

Q. by Gen. McDowell. Was not the joint order referred to in that conversation?—A. I have no recollection of it. It may have been referred to because we went to the right, my belief is to look at the country, but I do not recollect anything at all of the order being referred to.

Q. by Gen. McDowell. Were not the remarks witness has stated to have been made by General McDowell made with reference to the point in the joint order which required the troops not to go to a point from which they could not get behind Bull Run that night?—A. I think I have replied to the question by stating I do not recollect.

Q. by Gen. McDowell. Does not the witness recollect asking General McDowell if he knew of any roads leading to the right or right and front of the head of witness' column?—A. I do not. Early in the day General McDowell loaned me a map,
1013 and may have given some explanation with it. This is all the information I recollect of receiving, or having in my possession, of the country.

Q. by Gen. McDowell. Does not the witness recollect of being made acquainted by General McDowell with the information received by him from General Buford as to the force of the enemy which had passed through Gainesville?—A. I do.

Q. by Gen. McDowell. When the witness and General McDowell moved to the right, "with a view of seeing the character of the country," what were "the few words" which witness states passed between them?—A. I have given some of the words already; that was, my suggestion to take King's division to the right. I have no recollection of any conversation, or any words being used by me or him, except when reaching the railroad—remarking that the railroad was an obstacle—we having some little difficulty in getting over it with our horses.

Q. by Gen. McDowell. Does the witness recollect nothing of what was said by General McDowell on that occasion, and of his telling the witness to take his troops across to the Warrenton road, and of General McDowell's intention to go back to take his troops up the Sudley Spring road?—A. To the best of my recollection, nothing of the kind was conveyed to my mind.

Q. by Gen. McDowell. You have stated, "when General McDowell left me I did not know where he had gone." Have you not stated before the recent court-martial in your defense as follows: "We" (General McDowell and yourself) "soon parted, General McDowell to proceed towards the Sudley Springs road, I to return to the posi-

tion at which he first spoke to me after our meeting"?—A. I know now where General McDowell went. I did not know then.

Q. by Gen. McDowell. After General McDowell left you, you say you sent an officer to King's division, directing it to remain where it was for the present. What was the necessity for this order? Had the division, so far as you then knew, been ordered elsewhere?—A. I sent the message to that division to remain where it was for the present in order not to bring it to the front, where I was forming line, before I was ready for it, and intending to use it as the main support.

Q. by Gen. McDowell. Why did you continue to regard King's division as attached to your command after the receipt of the joint order?—A. I never thought of the point before, but General McDowell had left me, and, as I understood, in no wise changing the relations of King's division to my corps.

Q. by Gen. McDowell. Did not the joint order itself modify the first order you received from General Pope?—A. It placed all under the direction of General McDowell.

Q. by Gen. McDowell. If it placed *all* under General McDowell, how did you regard the fact of its being addressed jointly to you and him, and not to him only, if he was the *sole* commander?—A. I had reason to believe that order was written on an application made by me to General Pope for orders to be given to me in writing; this in consequence of having received verbal orders from him by persons whom I knew nothing of, and which were contrary to some instructions which I had received in writing. I presume the order was written by General Pope because I had a portion of General McDowell's command with me, and the order was intended for both.

Q. by Gen. McDowell. Did witness send any written order to King's division?—A. No, sir.

Q. by Gen. McDowell. How long was it after you left General McDowell before you sent Colonel Locke to King's division?—A. I sent him as soon as I returned to my command after leaving General McDowell. I returned immediately.

Q. by Gen. McDowell. Did you not ask General McDowell for some cavalry, stating you had none to send with messages, and did you not ask General McDowell to keep you informed when he should be over to the right with the main body?—A. I have an indistinct recollection of asking for some cavalry; do not recollect of asking General McDowell to keep me so informed.

Q. by Gen. McDowell. Will witness state if this is a copy of a note he addressed to Generals McDowell and King?

The note referred to was shown to witness.

A. To the best of my recollection it is.

The note was read by the Recorder, and is from Major-General F. J. Porter to Generals McDowell and King, and is appended to the proceedings of this day, and marked "A."

The Court took a recess of five minutes.

Q. by Gen. McDowell. Can you recollect the date of that note and about the
1014 hour it was written?—A. It was written on the 20th—I do not know the hour or about the hour.

Q. by Gen. McDowell. Did you not receive an order in the afternoon of the 29th from General Pope, addressed to you alone, directing you to make a certain movement?—A. I did.

Q. by Gen. McDowell. With reference to what took place when General McDowell met you, whilst he was with you, when he was leaving you, and with reference to what he did or said, or did not do or say when he was near Bethlehem Church, have you not spoken of General McDowell's evidence as given on your recent trial as having done you great wrong and great harm? If so, can you state wherein that testimony differs from what you have testified to on these points?

This question was objected to by a member of the court, and it was decided the question be overruled.

The witness stated that he had no objection to answer the question.

Mr. BULLITT said: The Board will recollect that yesterday the Recorder stated that he proposed to offer in evidence certain documents which he mentioned. The first one was the appeal of the petitioner to the President, which I have before me. The Recorder proposed to offer in evidence certain extracts which he indicated, beginning with one on the 1st page, another upon the 45th page, another upon the 52d page, and a third upon the 53d page. We have no objection to this evidence being offered. We wish the Recorder to understand that if he offers a part of a document we have a right to the whole, with the understanding that the whole goes in evidence. We, of course, have no objection to the parts to which he refers.

The RECORDER. The gentleman, I think, has misstated the rule. As

I understand it, the rule is a little different. Those parts which I offered were certain admissions of fact on the part of the petitioner. Anything that has relation to those particular admissions, of course, that may be demanded on the other side is admissible; not the entire argument in those printed books of the petitioner, but only that which has immediate and direct relation to what I offer; precisely what the rule is in the case of a private letter; only that part of a private letter is admissible in evidence, if the letter is objected to, which contains some particular admission of fact relevant to the issue on trial. This appeal goes into a number of questions. I have only taken particular ones. If this rule was not rigidly adhered to, no portion of a private letter could ever be introduced without spreading any quantity of extraneous matter upon records, that which is not connected with the matters in question.

Mr. BULLITT. I suppose there is no rule better settled in reference to the admission of evidence, that where a part of a conversation is given in evidence the whole is admissible; that where a part of a written paper is given in evidence the whole is admissible, simply upon the principle that it is impossible for the person who has to decide what the paper, or the particular parts referred to, may mean without having the whole, in order that the bearing and relation of the different parts to each other may be understood. As a matter of course, if there is anything in this paper which has no bearing or relation to this case, the Board would not pay any attention to it. All that we wish is to have the ordinary rule enforced. I have never heard it before doubted that where a portion of a conversation, or of a written document, is offered in evidence, the other side are entitled to the whole.

The RECORDER. We agree in that entirely.

The PRESIDENT OF THE BOARD. It is not necessary to consider the nice point of practice involved. The document can be submitted as evidence for what it is worth. We understand that only that portion
which relates to the subject-matter introduced by the Recorder is
1015 to be submitted. If the matter were before a jury, it might be
necessary to draw more closely the line of distinction between that which, under certain circumstances, may and that which may not be admissible.

The RECORDER. The document to which I refer is a long document. It contains a great many letters from different people on different branches of the case. I have offered what was merely an admission or statement of fact by the petitioner against himself.

The PRESIDENT OF THE BOARD. The Board understands that only so much of the document as is explanatory of fact is evidence. Whatever else it may contain is not desirable.

The RECORDER. Will the Board direct the counsel to point out to me those portions which they think are explanatory, so that I may know upon what they rely? I do not want the whole argument. If a man makes an admission against himself in a conversation continuing over a number of days, the entire conversation is not admissible. I object to the entire argument or printed book being put upon our record, and thus lumbering it up.

The PRESIDENT OF THE BOARD. It certainly is not necessary that it should be transcribed on the record of the proceedings. That I presume is not intended.

The RECORDER. I would like to have the counsel, under the direction of the Board, point out those portions which they think are explanatory.

Mr. CHOATE. That we propose to do when we come to argue the case.

The RECORDER. Then I object most strenuously to it being put upon the record in that form.

The PRESIDENT OF THE BOARD. If the Recorder insists upon it, it will be incumbent for the counsel to indicate the portion which they desire to have considered as evidence in connection with the portion submitted by the Recorder.

Mr. BULLITT. The Recorder has stated that he proposed to put in evidence all the reports which were to be found in the War Department in reference to this campaign. I would like him, if he can, to indicate the dates of the reports and the officers by whom they were made, and, as in some instances two or three reports were made by the same officers, which of them he proposes to offer in evidence.

The RECORDER. Simply those that apply to the 29th of August found in the published official volume of reports by Congress; those that are found in the volume of Confederate reports that we have each had in our possession, and which I believe are identical the one with the other. I propose to send to Washington copies of those reports that have been embodied in my opening statement, as soon as printed, and have them compared with the originals on file, and certified to. I have taken one published by the Confederate Congress in Richmond in 1864 and found in the Military Academy library, which has some of the original maps of Colonel Blackford and official communications and General Lee's report as found in the Rebellion Record.

Mr. CHOATE. What is it that you propose about those?

The RECORDER. Simply that those are the documents from both sides on file in Washington in the War Department—the official reports.

Mr. CHOATE. I do not understand the Recorder to offer them as evidence, of course. But there can be no dispute that those various generals made such official reports. I do not know whether he claims that they are to be received as evidence of their contents. We certainly must protest against their being received as evidence of their contents in respect to the facts stated. That they cannot be evidence of this nature I suppose appears from the fact of his offering the reports
1016 of the two sides upon the same battle. We know from our experience in this investigation how these reports are made up—that they are largely hearsay. The officers who make them do not profess to speak of their own knowledge in all those matters, and, not being here for cross-examination, it is impossible to discover what is their own knowledge and what is hearsay. These reports, too, are contradictory of each other. But it may be desired to have it understood that these various generals do make these official reports in the discharge of their several duties.

The RECORDER. It is usual, I believe, in courts of inquiry to receive official reports made by sworn public officers in the line of their duty; and they come in frequently explanatory of collateral matters that are not subjects of direct controversy, but that are quite convenient in that aspect.

The PRESIDENT OF THE BOARD. There is thought to be no objection to the admission of these reports, the manner of their construction being understood; that they are only evidence of the belief of the commander who made that report at the time on the best information he could get.

Mr. BULLITT. There is a matter to which we desire to call the attention of the Board, though the Board may not be prepared to decide upon it until General Terry is present.

It is this: Early in the course of this investigation it was suggested

by General Porter's counsel that it probably would be advisable that this Board should have before them the surviving officers who were active participants in the operations involved in this inquiry, and among others particularly Generals Pope and McDowell. If my memory serves me, the purpose which we had in view then was to put it in the form of an invitation or request to those gentlemen to be present and to be examined. I think I am not mistaken. However that may be, it appears to us that at the present time this investigation has reached a point where it is very important for the cause of truth, and in order that this Board may have all the light which can be thrown upon these operations, that General Pope should be present, and that he should be examined. We therefore wish to call that matter to the attention of the Board, and to express our own view in reference to its importance, in order that we may arrive at the truth connected with these operations, especially in view of some of the evidence which has been offered and received on the part of the Recorder, and to ask the Board to take such steps in reference to that matter as in their judgment may seem to be proper and expedient.

The RECORDER. It certainly seems to me that the remarks of the counsel for the petitioner are peculiar. If they desire, in the interest of what they call truth, to call General Pope as a witness, I certainly would interpose no objection, if they desire to call him as their witness. But if they mean to say how I shall conduct the government case under the responsibility which the Board has put upon me, I have merely to reply that they are going beyond their province.

Mr. CHOATE. What we desire is, that justice may be done. For one I do not really see how justice can be done by the Board, either to the government or to the petitioner or to the truth of the matters involved here, without the presence of General Pope. It is well known—I think it may be said to be well known to everybody—that General Porter's conviction was brought about very largely by the opinions of General Pope and General McDowell, given in evidence on the former trial;
which were entitled to very great weight, and certainly received
1017 all the weight that they were entitled to at the hands of the court
and the then President. But that is not all that is now known, because by the aid of the report of Major-General Pope, which the Recorder has now placed upon the records of this trial——

The RECORDER. I beg your pardon, I have not done so.

Mr. CHOATE. Well, he has tendered it.

The RECORDER. I have not tendered it.

Mr. CHOATE. Well, it has been stated as the then opinion of the officer in question at the time he made the report. We find that he was not only one of the chief witnesses, but that he was the original prosecutor and author of the charges, because the concluding words of his report are:

> I considered it a duty I owed to the country to bring Fitz-John Porter to justice, lest at another time and with greater opportunities he might do that which would be still more disastrous. With his conviction and punishment ended all official connection I have since had with anything that related to the operations I conducted in Virginia.

This is also in the light of the express disavowal, when he was on the witness-stand, that he had anything to do with the prosecution of General Porter, except as a witness. Now we claim that the fulfillment of subsequent years has brought to light a wholly changed state of facts which are now laid before the Board for its consideration; that General Pope stands not in the attitude of an absent party taking no part. That certainly is not so, because one of the first things that was laid before

this Board was an argument originating with him, communicated to this Board under the indorsement of the Secretary of War, and commended to its consideration by him; and the Board has had a formal message, as I understand, from General Pope, at least I have been so informed by the Recorder, that he had given all the evidence he had to give, and that he had nothing more to say. Now, it is possible that General Pope's opinion, as expressed on the former trial, may still be entertained by him, notwithstanding the changed state of facts. It is possible that his message bears this construction equally well, and the one which, in his absence, we shall certainly insist upon having given to it; that in view of the new facts which have come to light he has nothing more to say. Now, is it not a duty that that general owes to the country and to the petitioner, and which the government owes to the petitioner, that he shall be present here, so that the Board may understand whether, even in his own judgment, his former opinions which were used so much to the detriment of the petitioner in the former trial are still maintained and asserted by him; and if so, whether they are reasonably tenable? The Recorder says: "Very well, call him yourself." But are we to be put in the position of calling him as our witness? Does the Recorder mean that? Does he wish under the shelter of a technicality to force us into the position of calling a witness to whose statements and opinions we are not willing to give credit—a witness, who by his direct testimony as it stands upon the record has already sacrificed General Porter? I do not think he can mean that. What we insist upon is that justice requires that whatever means the government has, whether through this Board or otherwise, of bringing General Pope upon the stand shall be exhausted; and if the government has no more questions to ask him, that we shall be permitted to ask him such questions as may test the matter whether his original opinion will still hold, or whether he holds it even himself. That is a matter of the very greatest importance, as it seems to us.

Again, as Mr. Bullitt suggests to me, it already appears, by the evidence that has been laid before this Board, that General Pope
1018 was in fact mistaken on one or two very material points that formed the elements of the opinion that he then gave. We certainly have proved by the testimony of Colonel Smith that he was mistaken as to the place where he supposed General Porter to be when he sent him the final order, the only order to attack. It appears further, by the testimony of General McDowell, that in the description of the events of the 30th, as given by General Jackson in his report, General McDowell was mistaken. And it is only fair to General Pope to assume that he also, in circulating the same thing, was mistaken in attributing them to the 29th. Now, if General Pope, under his responsibility as a general making a communication to the President, which is found and produced from the files of the War Department several years after the occurrences, knowing all that had happened on the 29th as well as anybody knew them, thought that the description of the battle of the 30th was, in fact, what occurred on the 29th, it may explain how it was that he charged General Porter with remaining inactive all day knowing that a furious battle was raging continuously from daylight until dark. This I state merely as illustrative of the situation in which this case is left by leaving the opinions and statements of General Pope as they were formerly given under oath upon the record, and which, of course, the Recorder will claim are now applicable to the case, and will seek to influence the conclusion of this Board by them. It is impossible, it seems to me, for justice to be done under such circumstances.

Now what do we ask? This Board, as I understand, represents the President of the United States; you are acting as agents of the President in an official inquiry; you are acting for the guidance and enlightenment of his executive action; and what we would suggest is, that a polite invitation from this Board not having accomplished the object of bringing this witness here, and as it seems necessary for the purposes of justice that he should be here, that if there is no other way, the President should be asked, in the exercise of his superior power, to require the presence of General Pope here. He can be brought here. Whether he can be compelled to answer the questions, about which a doubt has been suggested by the Recorder, will be a matter which can be adjusted when he does appear. Certainly we do not feel that we can perform our duty to General Porter unless we in the most earnest manner urge upon the Board by every means in their power to secure the attendance of General Pope before the evidence in this case is closed.

The RECORDER. I have listened with some surprise to the remarks of counsel. I think that he bases much of what he has said upon a false premise. We do not know and cannot know what weight that original sworn judicial tribunal of nine general officers that tried General Porter gave to the opinion of any military man who came before it as a witness for or against General Porter. We cannot go into their thoughts and determine what weight they gave to the opinion of anybody. We do not even know that the court gave any weight at all to those opinions. We are precluded from bringing any of the court who are still living before us to ascertain, or from bringing the judge-advocate for that purpose, because they are bound not to disclose or discover the vote or opinion of any particular member unless required to give evidence thereof in a court of justice in due course of law. I see no changed facts in this case from what was originally brought out on that trial. All the points that have been raised here during this subsequent investigation were raised on the original trial. I have made no use of General Pope's report.

1019 I referred to the book called "Executive Document No. 1," of the House of Representatives, containing the reports of that campaign just now in response to the inquiry of the counsel, and said that I had merely used it for my own convenience, and that of whatever I put in, copies would have to go to Washington for verification by the originals. There is nothing in that original record to show that General Pope "sacrificed" the accused, to use the language of the petitioner's counsel. General Pope, it is true, commanded that army, and because he commanded that army, and because his report set forth the conduct of those who were under his command, he has indirectly here been made, through the petitioner's counsel, the subject of animadversion. It was the United States that prosecuted Fitz-John Porter, and the gentlemen know perfectly well that General Pope was not his prosecutor. They know perfectly well that that matter was brought up in the original trial, and that it was discussed here in the opening statements fully from beginning to end; and it was shown that the objection had been made by the counsel for the accused at that time, Reverdy Johnson and Charles Eames; it was shown that the matter had been considered by the court; shown that it had been settled by the court, and shown that General Pope, when he was called as a witness for the United States and questioned upon it, answered that he did not know who had preferred the charges, but that he had in his official reports narrated what he thought it was his duty as a public officer to report and to narrate of the conduct of those under his command. I also used the very language in my opening statement that the gentleman has just quoted. They are concluded by

reason of the original record from at this date showing that General Pope was the accuser. They exhausted the subject at that time. Further, General Pope was not a direct witness to any of the transactions alleged. He gave orders from a distance. He did not see whether the accused did or did not do certain things. When asked for his opinion as to where he thought the accused was, he gave it based upon what he supposed was the position of the accused. Whether the original court gave any weight to that we do not know, and never can know until Congress acts on that subject. Of course, that is not a subject for further review. He was cross-examined fully by Mr. Johnson, and they closed their cross-examination, so far as any knowledge that he had of the transaction was concerned, of his direct evidence. I do not propose to produce him here as a witness, no more than that I have not produced several others. I do not consider that this is a retrial of the case; therefore I, in the exercise of the discretion that has been given me, have concluded not to summon a number of persons. On some branches of this case I have quite a number of witnesses left; but I do not care to take up any further time of the Board with them.

Mr. BULLITT. We suppose that this investigation is a little different from an ordinary investigation conducted by a court, and probably different from an ordinary investigation conducted by a court-martial. Of course, in the ordinary proceedings by a court-martial, or in an ordinary proceeding in a civil court, each side produces merely the testimony which it relies upon, and no fault can be attributed to a court, or a court-martial, if it does not go beyond what the parties before them litigating choose to produce. This, however, is a Board appointed to investigate certain facts for the purpose of enlightening the judgment of the President in order to enable him to determine what course he shall pursue. The view which we entertain is, that if in the course of this investigation any testimony shall be brought to the notice of this Board that would seem to be important to enable them to arrive at a correct judgment in reference to the issue before them, that they would
1020 wish themselves to be informed about, it would be entirely proper for them to say to the judge-advocate, or to the parties representing the petitioner, that they wished the proper efforts made to have that testimony brought before them, in order that they might be properly informed, and be enabled to discharge the duty assigned to them in a way satisfactory to themselves. Hence it is that we suppose it to be entirely proper for the Board itself to call or request that General Pope shall be summoned before them in order that he may be examined in reference to these facts. Now, as to the question of the importance or value of General Pope's opinion upon the matters involved before the court-martial, of course we do not know what weight was given by that court-martial to that opinion. But we do know that very great weight was attached to it by the judge-advocate; and we know further that, when the then President wished to consider the question as to whether he should approve the sentence or not, he applied to the judge-advocate to review the proceedings of that court-martial, and give him the benefit of his opinion upon the subject; and in that review which we have before us, and which is now before this Board, we find this language:

> It may be admitted—and perhaps the testimony requires the admission to be made—that in falling upon the enemy on the afternoon of the 29th, the accused would have encountered both difficulty and danger; but difficulty and danger in time of war are daily and hourly in the category of the soldier's life. Their presence should be for him, not a discouragement, but an inspiration. To grapple with them should be his ambition; to overcome them, his glory.

That a vigorous attack upon the enemy by the accused at any time between twelve o'clock, when the battle began, and dark, when it closed, would have secured a triumph for our arms, and not only the overthrow of the rebel forces but probably the destruction and capture of Jackson's army, the record fully justifies us in maintaining. This opinion is emphatically expressed by Generals Pope, McDowell, and Roberts, and by Lieutenant-Colonel Smith, all of whom participated in the engagement, and were well qualified to judge.

After quoting the opinion of General Roberts, he says:

To the same effect is the following explicit language of General Pope: "Late in the afternoon of the 29th—perhaps towards half past five or six o'clock—about the time that I hoped General Porter would be in his position and assaulting the enemy on the flank, and when General McDowell had himself arrived with his corps on the field of battle, I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground with his dead and wounded upon it in our possession. Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to eight o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson."

Now, I suppose that when the general in command expressed such an opinion as that, it would be almost idle to suppose that a court-martial, or a board, or any one to whom it was addressed, would not be very materially influenced by it. But when we find that opinion relied upon by the judge-advocate in his review as one of the strongest reasons, I submit that that opinion must have had weight, not only with the court-martial and with the judge-advocate, but with the President, in approving the sentence. It does seem to me that, in view of what has taken place before this Board, and the evidence you have now before you, we have a right to know whether the opinion which General Pope expressed before that court-martial was founded upon premises that were unsound and incorrect in point of fact, upon misapprehensions of the situation, and whether, in the light which we can now and have now shed upon the events of that day, this opinion which he then expressed would be changed by him. For if he were now to come here and say he had made an entire mistake in view of the evidence as it now stands,
1021 that he was mistaken in that opinion, I suppose that it necessarily would have very great weight with this Board. It is suggested by my colleague, Mr. Choate, that this Board in analogy to courts-martial have power to summon witnesses in addition to such witnesses as may be summoned by either party.

The RECORDER. I am very sorry that the counsel made that closing remark, because it compels me to reply to it. They had full opportunity to examine General Pope, and cross-examine him, as to his opinion and the value of it at that time. The Board know that I have earnestly objected to a continuation of the cross-examination of sixteen years ago of those witnesses of the government who have been brought here; a cross-examination upon the direct testimony that they had given then, testimony which they had given with the facts fresh in their recollection; and that cross-examination addressed to the circumstances that were influencing their minds and thoughts at the time that they gave their direct testimony. I have objected because I thought and believed that there is no witness living who could after the lapse of sixteen years, before skillful counsel, sustain a further cross-examination on a direct examination originally then given. I do not desire to submit any witness to any such process, and will not, if I can help it. I do not think, as I have said before, that this Board was organized for that purpose. That record stands as it stood when the witnesses were brought before that court and examined. This Board is outside of the law. It has no legal

power to summon or compel the attendance of witnesses, and consequently no military order, I venture to say, has any validity to compel the attendance of any military man before it, unless he chooses to come. Furthermore, there is no power to compel a person to testify. The gentlemen are entirely in error when they bring up, time after time, this question as to the power of this Board. It is merely an advisory Board. There is no act of Congress giving the President power to revise these proceedings. It is merely in an advisory capacity that we act, to take merely what the accused chooses to offer, and to look at the original record, and then to say that if what is here adduced were proven to be true in case it was submitted under the usual forms of evidence, that in their judgment it might change the result, and that, therefore, they recommend the President to ask Congress to appoint a proper tribunal. I do not propose to bring General Pope here. A remark was made in reference to a dispatch or rather report of General Jackson of the 29th of August, which they assert that he published. I said then, and I say now, that as we have seen that that was written by Mr. Faulkner, of Virginia, for General Jackson, who was not on the field at the time of the action. The report was applicable to the 29th, and in exact accordance with the report that Longstreet made, that at four o'clock he did certain things; and when the two are compared it will be found to be so.

Mr. CHOATE. Now that we have the positive refusal of the government representative to call General Pope, we think that the action of the Board is necessarily invoked as an independent organization.

The RECORDER. You can call him yourself.

Mr. CHOATE. If it is true, as the Recorder says, that this witness cannot stand or be expected to stand a cross-examination upon his former evidence, in view of what has since transpired, it is obvious that justice demands that he appear here. I do not think there is any question about the power of the government to get him here. He is a servant of the government, in its employ to-day, and upon the order of the President, or the Secretary of War, he must come. Whether he can
1022 be compelled to testify when he gets here is another question.

The horse can be brought to the water, but if he should refuse to drink, why, the world may conclude that it is a case of military hydrophobia, and that credence is not to be placed upon the evidence as it stands.

The RECORDER. I had no special reference to General Pope in my remark as to this subject, but I have felt that this species of investigation in the direction that they would like to carry it, this not being a court of inquiry, would be an engine destructive of military merit. We know how carefully the articles of war guard even the formation of a court of inquiry to investigate a transaction.

The PRESIDENT OF THE BOARD. For the present the Board, relieving the Recorder of any responsibility in the matter, and believing that he has discharged his duty, as he understands it, will send a dispatch to General Pope reciting the fact that the counsel for the petitioner have stated that they believe justice to their client requires his presence here, and that the Board, therefore, request him to come.

The RECORDER. Would the Board apprise General Pope that it is for the purpose of having his cross-examination of sixteen years ago continued?

The PRESIDENT OF THE BOARD. No.

E. P. BROOKS, was then called by the Recorder, and, being duly sworn, testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Washington, District of Columbia.

Q. What position did you hold in the military service of the United States in the month of August, 1862?—A. I was acting adjutant of the Sixth Wisconsin Volunteers.

Q. Where were you on the morning of Friday, August 29, 1862?—A. On the morning of the 29th I came with King's division from the battle-field of the night of the 28th back to Manassas Junction.

Q. What orders, if any, did you receive that morning?—A. I received an order to go with Morell's division of Porter's corps back to the battle-field where King had fought the night before.

Q. Did you do so?—A. I went back to a point where I presumed General Morell would have no difficulty in finding his way to the turnpike, and then I returned to King's division.

Q. Could you by looking at the map indicate the point to which you went with Morell's division [Duffee map shown witness]?—A. We moved out on the Gainesville road. I do not think this map is quite complete.

Q. State in what respect.—A. There is a road running from somewhere in this vicinity across in that direction [across to Lewis lane No. 1].

Q. From whose place and to what point?—A. I could not say. I merely know from the general direction that I carried Morell's division; I rode with Morell at the head of the division until we reached this point. My impression is that we crossed Dawkins' Branch, but I am not positive about that. We certainly got so near here that I could point out to him the direction of the battle-field of the night before.

1023 Q. Which road had you come down the night before from Gibbon's battle-field?—A. The battle-field of the night before, the line of battle ran across there [near the Douglass and Brewer houses]. There were two regiments of Gibbon's brigade engaged on the east of the woods. When we fell back that night we fell back directly across the Warrenton turnpike, and struck the lane about there [about near the word "lane" of Lewis lane No. 2]. Colonel Bragg and myself were at the head of the column; and we marched down this way until we reached this road here [not indicated], and this road [road marked in ink on the map "E. P. B."]. Then we followed down the Manassas and Gainesville road to the junction. When we got there, as I say, in the morning, I went back with Morell's division to this point. [Witness indicates a point near Dawkins' Branch.]

Q. On the night of the 27th of August, 1862, did you carry any orders?—A. I carried orders to General Kearney and General Reno, and bore orders to Kearney which were afterwards sent to General McDowell.

Q. Do you know what time the orders were delivered by you to Kearney and Reno?—A. To Reno at 12.20 precisely, and to General Kearney at 1 o'clock precisely, that night.

Q. Have you any memoranda with you by which you fix that?—A. I have the receipts on the envelopes.

Q. Of those officers?—A. Yes. [Witness produces envelopes.]

Q. That was handed to you at the time by General Reno?—A. Yes.

The RECORDER. It is marked—

Received at 12.20 m.

RENO, *Maj. Gen.*

Q. And as to this one?—A. That is Captain Mindil, who was assistant adjutant-general for General Kearney.

Read as follows:

Received Aug. 28th, 1 a. m.

MINDIL, *A. A. G.*

Cross-examination by Mr. CHOATE:

Q. From whom did you receive that order to go with Morell?—A. It came to my immediate commanding officer General Gibbon. A message came down asking that the officer who had carried the orders of two nights before should be sent back with General Morell, or some one else who was thoroughly familiar with the ground.

Q. Did you receive it in writing?—A. No, sir.

Q. Who brought or delivered to you the order?—A. My impression is that Colonel Bragg delivered it to me.

Q. Colonel Bragg, now a member of Congress?—A. Yes, sir.

Q. Did you keep copies of those orders?—A. Of which orders?

Q. Of the orders that you delivered in those envelopes?—A. I have a copy of one of those orders.

Q. Did you keep copies?—A. I did not. It was preserved by accident.

1024 Q. Of which of them have you a copy?—A. I have a copy of the order to General Reno.

Q. Let us have that. Are you sure it is a copy?—A. Yes. [Witness produces a paper.]

Q. In whose handwriting is this copy?—A. I presume it is Colonel Smith's.

Q. Did you see the original?—A. That is a copy of the original. There were duplicates of the orders written that night.

Q. Was this a duplicate writing or not?—A. Colonel Smith wrote out one there, and I think Colonel Ruggles wrote out another at General Pope's dictation. The idea was that I should carry duplicate orders, and, if necessary, give one of the copies to the captain of my escort and let him go on. It was expected that I would fall in with the rebel-picket lines.

Q. Where were you when this order to Major-General Reno was given to you?—A. At Bristoe, General Pope's headquarters.

Q. Who gave it to you?—A. I presume General Pope or Colonel Ruggles, or Colonel Smith perhaps.

Q. It is dated 9 p. m. Was it at that hour?—A. It was very near that time.

Q. How far was it from there to where you found General Reno?—A. I found General Reno between Bristoe and Greenwich.

Q. How far is it from Bristoe to Greenwich?—A. I could not tell without referring to the map.

Q. Have you any opinion as to how far it is?—A. I would not like to express an opinion positive without referring to the map.

Q. Did you find it nearer to Bristoe than to Greenwich?—A. I found it nearer to Greenwich than to Bristoe.

Q. How much nearer?—A. About two hours and a half nearer, perhaps.

Q. I did not ask you in hours; I mean in distance.—A. That is the only way I can estimate it.

Q. Perhaps you can tell on the map about where you found him. [Map shown witness.] Look at the map now shown you, and state about where, between Bristoe and Greenwich, you found General Reno.—A. I am positive I struck Reno about there. [Witness marks the map with the word "Reno."]

Q. You went on that road, did you?—A. I presume so.

[The map from which the witness testifies is marked "Brooks' map."]

The RECORDER. Where does that map come from?

Mr. MALTBY. The War Department.

The WITNESS. You will see by the dispatch that I delivered the dispatch to Reno at 12.20 and to Kearney at 1 o'clock.

Q. The difference between the point where you found Reno and where you found Kearney was forty minutes?—A. Yes, sir.

Q. Who accompanied you that night?—A. There was a detachment of cavalry. I think they belonged to the Sixth New York Volunteers.

1025 Q. How many?—A. Sixteen men, I believe.

Q. Can you tell why it was that it took about three hours and ten minutes to go those four and a half miles with your troop of sixteen men?

(Objected to as assuming.)

Q. To go the distance you did to find General Reno?—A. I went as directly as I could, except on one occasion, when I was obliged to make a detour to get around what presented itself to me to be a rebel vidette. I came into what Virginia farmers down there know as a black-jack road, and I found that I had not avoided the line, but gone through it.

Q. How far around did you go?—A. I could not tell you exactly.

Q. Did you lose your way?—A. No, sir; I am very positive about my directions.

Q. You only went off the road?—A. Off the road purposely.

Q. Is that the only explanation you can give of your being three hours and ten minutes in riding that distance that night?—A. I am not positive about that being the correct distance.

Q. Well, whatever distance it was.—A. I halted some time at the picket outpost where I struck Reno's out lines, and had a controversy with the officer in charge relative to sending a sergeant with me to Reno's headquarters. I struck their line at 12.10, I presume.

Q. When did you get this copy of the order to Reno from Colonel Smith?—A. Some time after nine o'clock, or about nine o'clock.

Q. This very copy?—A. That very copy.

Q. That same night?—A. Yes.

Mr. CHOATE. We offer it in evidence.

The WITNESS. I don't recollect whether General Pope or some one else gave it to me. It was given to me as one of a number of dispatches that I was to carry.

Q. Can you furnish us with a copy of the order to General Kearney?—A. No, sir.

The RECORDER. I should like to know the object of offering this paper in evidence.

Mr. CHOATE. Part of the history of that night. It is a very different order from that which was directed to General Porter, written three or four hours before. When General Pope wanted a thing done without any discretion on the part of the party to whom it was addressed, he knew how to write his orders.

The RECORDER. If it is as a mere comparison of the way he chose to write to different individuals, of course it would not be proper. That is all collateral.

The PRESIDENT OF THE BOARD. We see no objection to admitting it.

The order was read, as follows:

BRISTOE STATION, *Aug. 27th*, 1862—9 p. m.

To Maj. Gen. RENO: March at earliest dawn of day, with your whole command, on Manassas Junction. Jackson, Ewell, and A. P. Hill are between Gainesville and

1026 that place, and if you are prompt and expeditious we shall bag the whole crowd. McDowell advances upon Manassas Junction from Gainesville at the same hour; Kearney on Bristoe. As you value success, be off at the earliest blush of day. Acknowledge the receipt of this, and do not stop to look for roads, and, if necessary, leave guards with your trains. Push across the country wherever artillery can be hauled. I rely on your speed.

JOHN POPE,
Maj. General Commanding.

Q. You returned next morning with Kearney's division from Greenwich to Bristoe?—A. We struck Manassas instead of Bristoe.

Q. Your orders were to remain and return with General Kearney?—A. Yes, sir.

Q. Have you ever seen the order to General Kearney?—A. I don't know that I ever did.

Q. Would you recognize it if you saw it?—A. I am not positive.

Q. Now, in regard to the night of the 28th. You belonged to King's division?—A. Yes, sir.

Q. Being a lieutenant of volunteers in a Wisconsin regiment?—A. Yes, sir.

Q. Had you any other office?—A. The acting adjutant of that regiment.

Q. Did you receive any orders in connection with that march of King's division on the night of the 28th?—A. No, sir; General Banks was in command of the regiments that night as they came off the field, and he and I rode at the head of the column on our way back to Manassas Junction.

Q. Your regiment took the lead?—A. Yes, sir.

Q. Did you at any time quit the head of the column?—A. That night?

Q. On the 28th.—A. Yes; I presume I quit the head of the column half a dozen times, and rode to the right and left of the line of march.

Q. Did you go to the rear at all?—A. No, sir.

Q. Did you at any time march with any other regiment than your own?—A. At no time left the head of the column.

Q. Then have you any personal knowledge that anything but your own regiment went on the road which you have marked on the map?—A. I have very good reason to believe the division marched behind us, because they were behind us at daybreak the next day.

Q. But how they got there you don't know?—A. I did not see the footsteps of each individual soldier.

Q. But you didn't see any of them except your own regiment until you got to Manassas Junction?—A. That is true.

Q. Did you know that several of the leading officers of that command or division had testified here that they came by a different road?—A. I did not.

1027 Q. It might be that while your regiment came the way you have described, other parts of the division came by another road without your personally knowing it?—A. It is possible, certainly, but I hardly think it probable.

Q. Had you ever been on the road you have described before from Lewis lane down to the Gainesville road?—A. Yes, sir.

Q. When did you do that?—A. We had been camped in the vicinity of Catlett Station on a line with the railroad frequently before that, and I had been around the country very often. I could not specify the time.

Q. What time did you get on the morning of the 29th to Manassas Station?—A. We got there possibly between six and half past seven.

Q. Do you know how many roads met at Manassas Station?—A. I could not tell you.

Q. What did you do when you got to Manassas Station that morning—did you go to sleep?—A. No, sir; I remained up and got some breakfast. I was sent back to Morell's division.

Q. Who gave you that order?—A. I said either Colonel Bragg or General Gibbon, or some one connected with division headquarters. It might have been Major Dawes.

Q. Were you at Manassas Junction when General Morell's division arrived there?—A. That I am not positive about. My belief is that we got there about the same time.

Q. You came, as you say, on the Gainesville road all the way from where you struck it?—A. On the road I indicated on that map.

Q. On that passage, didn't you come across any of General Porter's division anywhere?—A. I met them at Manassas Junction on the morning of the 29th.

Q. Which way did they come into Manassas Junction?—A. I don't recollect that.

Q. Did you observe?—A. Not especially.

Q. What was the relative position of King's division of Porter's corps when you received your order about seven o'clock on the morning of the 29th to conduct Morell's division?—A. I did not say it was seven o'clock.

Q. When was it?—A. I don't know; I don't recollect.

Q. I want you to state as near as you can.—A. I think it is an impossibility.

Q. Was it seven, or eight, or six, or nine?—A. It was nine or ten; perhaps sooner than that.

Q. When you received your order at that time in the morning, what was the relative position of King's division and of Porter's corps on the road?—A. That I cannot say positively, nor can I give any definite impression of it.

Q. You cannot state whether in coming down the Gainesville road to Manassas Junction you passed any of Porter's corps on that
1028 road?—A. I have just said, my impression is we met at the junction.

Q. They came from one direction, and you from another?—A. Yes.

Q. You don't think they countermarched from Manassas Junction, and went back on the same road by which they had come into it?—A. I am not positive about that. I only know this, that when I was asked to go back with Morell's division, I objected, but finally did go back.

Q. They had come into Manassas Junction by a different road from that which you took. The road upon which you conducted them back was the same road you had traveled?—A. Yes.

Q. Didn't your division lie on that road running into Manassas Junction?—A. We breakfasted there that morning, I presume.

Q. Along that road?—A. Yes.

Q. In conducting Morell's division from Manassas Junction over this road, which they had not been upon, did you conduct them past your division?—A. That would be my impression.

Q. It must have been so.—A. It would be an impression, but I cannot state positively.

Q. It must have been so.—A. If your premises are correct.

Q. It is your premise and not mine. If your previous statement was correct, you guided Morell's division by this road which they had not

been upon?—A. Which I have not said, because I don't know whether they were on that road or not.

Q. Did you see any of them on the Gainesville road until the head of your column got to Manassas Junction?—A. That is exactly what I said—that I did not.

Q. Then they were not on that road?—A. I am not positive about it.

Q. Do you know that they were at Manassas Junction?—A. There is where I met them.

Q. Didn't you know that they arrived there that morning?—A. I say, I think we arrived cotemporaneously.

Q. You arrived by one road and they by another?—A. That is possible.

Q. Then, in conducting Morell's division over the road which you came upon, didn't you lead them right by King's division?—A. Whether they were lying parallel with King's division when it was at breakfast, or whether there was countermarching, or anything of that kind, I am not positive.

Q. Did you see General Morell that morning?—A. I was sent to General Morell, and reported to him.

Q. Reported to General Morell personally?—A. Yes. Then I rode with General Morell until we reached this point I speak of, and then I returned to my division.

Q. Have you observed on the map a stream called Dawkins' Branch?—A. Yes, sir.

Q. Will you swear that you went beyond that run?—A. I will not.

1029 Q. How far are you certain that you did go; how near to Dawkins' Branch?—A. Right at the branch.

Q. How near to it?—A. Very near the elevation on the side towards Washington. When I had the map in my hand I pointed out on the map where I supposed——I said I had an impression that parties had gone beyond the branch.

Q. You know General Morell?—A. I saw him before that. I have not seen him since, to my recollection.

Q. Do you recollect crossing a railroad on the night of the 28th?—A. Coming back to King's division?

Q. Yes.—A. I rode to the railroad, or near it, at one time.

Q. Do you recollect crossing it to get on the Gainesville road?—A. I cannot recollect positively.

Q. Have you been there since?—A. No, sir.

Q. Do you know that at the place where you described your position as coming down to get to the Gainesville road, they crossed a railroad or high embankment?—A. I think there was a high embankment very near the point you refer to. I am not positive about it.

Q. You would be likely to know if you crossed a railroad or high embankment?—A. I would be likely to know if it happened yesterday, but not if it happened sixteen years ago.

Q. Do you know how you got over that embankment?—A. I did not assume that I got over it.

Q. Was artillery with King's division?—A. Yes; battery B, Fourth Artillery.

Q. Do you know how that was got over?—A. I do not assume that it was got over; I don't recollect.

Q. Do you recollect whether or not you did cross a railroad, or a high embankment?—A. I have no recollection on that point whatever. I recollect riding to a railroad at one time; Colonel Bragg sent me there.

Q. Did you go along a railroad that night?—A. The railroad ran very near parallel with us sometimes.

Q. After you got on to the Gainesville road?—A. All times, I reckon.

Q. You were examined as a witness upon the former trial, were you not?—A. Yes, sir.

Q. How did you get back to King's division after carrying these orders on the night of the 27th or morning of the 28th?—A. I was sent back by General Pope with an order to General McDowell, which I delivered very near the battle-field of Gibbon's battle of the night of the 28th. I got there about four o'clock in the afternoon, I think.

Q. Where did you find General McDowell?—A. Just this side of that piece of woods, in an open field.

Q. From where did you take the order from General Pope?—A. Manassas.

1030 Q. How long before the fight of the night of the 28th did you reach General McDowell with that order?—A. The fight began about seven o'clock, and I think I delivered the order about half past four or four.

Q. To General McDowell in person?—A. Yes, sir.

Q. Then you remained?—A. No, sir; then I went with my own command, and was describing the manner in which I had been chased in by some rebel cavalry to General Gibbon, when the enemy opened with a piece of artillery; and that began the battle of the night of the 28th.

Q. On the receipt of this order from General Pope, did General McDowell leave?—A. Yes, sir.

Q. Have you got a copy of that order?—A. No, sir.

Q. Have you ever had a copy?—A. Never since I delivered it.

Q. Do you know what its contents were?—A. Not positively. I could not repeat it.

Q. How soon after reading it did General McDowell leave King's division, and which way did he go?—A. He left King's division and started for Lewis lane No. 1.

Q. Going into and through Groveton?—A. No, sir; he went across the fields. That is my impression.

Q. How many minutes after receiving this order from General Pope did he go?—A. I have no objection to answering that question or any other question that you put to me, if you will put it on the reasonable assumption that no man can recollect sixteen years exactly what occurred. I presume, then, that he left there within twenty minutes after I delivered the order.

Q. Did you see the order?—A. Yes, certainly; I had it in my hand.

Q. Did you hear him read it?—A. No, sir.

Q. Did you hear him say what it ordered him to do?—A. Only that it ordered him to join General Pope.

Q. Did General McDowell, in stating the contents of this order, state where it ordered him to join General Pope?—A. I have not said that General McDowell stated the contents of the order.

Q. You stated somewhere that it ordered him to join General Pope?—A. That was a casual remark that he made when he went away. I knew the purport of the order at that time.

Q. Didn't it order General McDowell to join General Pope at Centreville?—A. That is my recollection of it.

Q. Did it order him to join General Pope at Centreville alone, or with his command?—A. If you want my recollection of it, which, of course, as I said before, may be imperfect, I will give it to you very fully

Q. I ask you for that part of it.—A. He was to join General Pope alone. His command was to be deployed.

1031 Q. With what force, if you know, did King fight that night?—A. Six regiments and one battery.

Q. With what enemy?—A. I have understood since that he fought with Ewell's division; Ewell lost his leg that night.

Q. You were not asked on the former trial what route you took that night, were you?—A. No, sir.

Q. When were you first asked that?—A. I think I first asked myself it a couple of years ago.

Q. Besides your own inquiring mind, when were you first asked by anybody else?—A. Never until to-day. I never looked at a map of it until to-day.

Q. Have you at any time told anybody since you first asked yourself this question, what route you took?—A. I have discussed it with a large number of people.

Q. Have you told anybody connected with this case?—A. I have not until to-day.

Q. Have you told no other of the witnesses in this case?—A. Not that I recollect.

Q. Now, having thought of it for fourteen years, can you undertake to speak with absolute certainty as to the route you took that night?—A. I have said exactly what my impressions were; but as to the route that you say I took on the night of the 28th, I am very positive about that.

Q. Can you speak with absolute certainty?—A. With positive certainty.

Q. And not only saying that you came that way, but that you did not come any other?—A. And not only saying that I did not come any other—yes.

Q. What was it that set your mind inquiring about that two years ago?—A. It was common newspaper comment in regard to this case.

Q. You have interested yourself a good deal in this case, have you not?—A. Not more than a newspaper man generally does upon a matter of which he has some special knowledge.

Q. What newspaper are you connected with?—A. The National Republican, in Washington.

Q. You have written a good many articles about this case in that paper?—A. Not a great many; I have written a number.

Q. Can you identify them by dates?—A. No, sir. How do you mean by dates? Recall dates now?

Q. Yes.—A. No, sir.

Q. Could you identify them if they were shown to you?—A. I think I can relieve you in your inquiry by telling you that no one has written anything for the paper upon that subject except myself.

Q. All of your articles have been hostile to General Porter?—A. Not intentionally so. They have been exceedingly just, upon what I considered to be the facts.

Q. But actually they have been hostile to him?

1932 The RECORDER. I object. That is not proper.

Mr. CHOATE. I will not press that if it hurts your feelings.

The examination of this witness was here closed.

Rev. FRANKLIN STRINGFELLOW, called by the Recorder, being duly sworn, testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Powhatan County, Virginia.

Q. What is your occupation?—A. Rector of churches in Powhatan.

Q. What position did you hold in the Confederate army of Northern Virginia on the 29th of August, 1862?—A. I was at that time scouting for a cavalry corps. My place was at General Stuart's headquarters.

Q. Major-General Jeb. Stuart?—A. Yes, sir.

Q. Where were you early on the morning of Friday, August 29, 1862?—A. Unless I am mistaken, Thursday night I slept within ten feet of General Jackson in a Sudley yard. I may be mistaken in the date, but it was one of those nights. My impression is it was Thursday night.

Q. Friday morning, August 29th, where were you with reference to Sudley Church?—A. The cavalry, when I joined it, was just about this point in the rear of the line of Jackson's army [back of the Independent line of the Manassas Gap Railroad]. When I took charge of the head of the cavalry, and rejoined General Stuart, he rode up in the direction of where I was at the head of the column. I asked him where he desired to go. It was my place to have the advanced guard. I staid at the head of the column always, unless I had been sent off on some special purpose. The artillery was not with us that day. He told me that we must find Longstreet, and I moved with the head of the column across a little piece of woods, and then struck out in the field, following no road, unless it was a plantation road, until we struck above Gainesville. Here in this direction you will find Hay Market. General Stuart gave me as a general idea that we would likely find Longstreet either at Gainesville or Hay Market. In order to accomplish the object I thought I would strike at a half-way point. I struck in this direction, and came out at a little grove. There is a house there at present. I don't recollect the name of it, just about half-way between Hay Market and Gainesville; I will not say in regard to it. General Stuart was with me a good part of the time that I was going across this field, sometimes falling back a little, and sometimes riding up with me. I saw this movement on this pike [the Warrenton pike], and I think General Stuart gave me orders to gallop forward and find out what it was. That was generally my business at any rate. When I saw what I took to be the head of Longstreet's army, it was just about half-way between Hay Market and Gainesville. Then the cavalry—I don't know whether the cavalry came up and joined him, or whether they crossed down on this pike, because, as my memory serves me now, I was standing back at that point to let Jackson know that we had found Longstreet.

1033 Q. Early in that morning, when you were in the neighborhood of Sudley Church, did you see, or did you know, of any offensive operations being conducted there? If so, what?—A. As far as I recollect now, we were all lying down about daylight, and several pieces of artillery were fired right across this field—the enemy had gotten in between our extreme left—one of our regiments, as I heard afterwards—I knew nothing of the circumstances at the time—had marched off too far, and formed no connection with the main army, and left a break in there; and one of the pieces of the artillery had gotten into this field; they fired into this yard where we were, and the balls passed, I suppose, five feet above our heads, creating a little commotion in the wagon-train. How they were driven back, I don't know.

Q. About what time in the day did you start with General Stuart to go from the neighborhood of Sudley Church, up to the point that you have indicated?—A. I could not tell you the hours, from the fact that I had no watch, but I suppose between seven and eight o'clock in the morning. It was early in the morning.

Q. Did you during that day pass south of the Warrenton pike?—A. Yes; I crossed there several times, but I had nothing more to do with the movements of the cavalry after that time. I was part of the time with Jackson as courier, to pass from Jackson to Lee; and later in the day I was around to the right in a cherry-tree on a farm now known as the Chinn farm.

Q. What time of day was that?—A. I suppose three or four o'clock in the evening. I don't recollect what hours; it is impossible for me to recall that.

Q. How far did the Chinn farm extend? [Map described to the witness.]—A. I think from my position, which was 150 yards from the Chinn house, it was all covered with troops; I took them to be the extreme left; though there might have been other troops that I saw nothing of. I saw men on that crest, several hundred of them, in and about the yard; I was about 150 yards off, in a cherry-tree, and I could see all up the line on one side to a considerable degree, and every movement they made. As these movements were made, I rolled up little notes and dropped them at the foot of the tree; I had couriers creep up on their hands and knees and get the notes and carry them back to a graveyard, where there were mounted messengers who carried them to General Lee; so that every preparation was made for them before they got there.

Q. Did you see Longstreet's troops that day?—A. I saw troops continually. I paid no particular attention to the troops. The first place that I recollect seeing anything like a position—but I would not be certain that it was meant for a battle-line—was what I took to be a couple of regiments, maybe several regiments—though they may have been lying there to rest—just about here. [Witness indicates a point back and west of Page Land lane.] They came up there a short distance from the road. I don't know whether they were meant for a line of battle or not. There was a line of battle, however, formed, which I did see down in this vicinity, near Page Land lane, on a little ridge running across here; I think the next came there, where they seemed to form a regular line of battle; there is now a house at the place. [Witness indicates.]

Q. Then where was the next point which they took?—A. There was an advance after that to, I think, the edge of these woods. Longstreet's men, as I understand this map, came down towards Lewis' lane; 1034 that is the first line I noticed. I was in this tree a great part of the time; I paid no attention to the general management of the infantry. It was not my business.

Q. About what time of day should you say that they took up position?—A. I don't know.

Q. Three or four o'clock?—A. I could not tell you anything about that.

Q. In reference to the middle of the day?—A. It was after the middle of the day, I should say; but I don't know enough about those things to make any testimony in regard to it. I had no watch, and I cared nothing about the hour.

Q. Did they take any other line of battle that you recollect during that day, or Friday?—A. I don't recollect about that. It seems to me

that on Friday, if I understand this map, we got down as far as these little woods [under the word "Gainesville"], though I do not say that positively. I don't know anything about those operations, I paid so little attention to it.

Q. Did you during the day get anywhere down in the neighborhood of Vessel's, or did you see any troops in the neighborhood of Dawkins' Branch?—A. I don't know anything about it. I knew very little about the infantry. I had nothing to do with it. I was 150 yards from the Chinn house. That must have been on Saturday. I don't think it could have been on Friday that that line of battle was there. I could not testify now whether it was Friday or Saturday; but there was this: I should say it was Saturday, from the fact that there was very heavy fighting.

Q. Around the Chinn house?—A. No, sir; not such very heavy fighting around the Chinn house. The first shot they fired was into the tree when they discovered I was in it. The artillery cut off one limb of the tree, and I thought they were firing at something else, and I staid up in the tree. They run up another gun, and put a little grapeshot in the tree, and then I knew it was meant to stay. I dropped to the foot of the tree, and I staid there until a messenger from General Stuart called me back. I finally got to the grave-yard and got on my horse. I don't recollect how long it was before I got to the tree again.

Q. That was on Saturday?—A. I think that was Saturday.

The examination of this witness was here closed.

The RECORDER said: I presume General Piatt will be here to-morrow. I have had a telegraphic reply from Rev. Mr. Landstreet, stating that he cannot come until the 23d, owing to his engagements. As he lives in Maryland, and as Major White resides there, another witness from Bank's corps, and one other witness who was with the advance of Longstreet on that morning, I suggest that I go down there and take their interrogatories, and that some of the petitioner's counsel go down with me, and their examination be reduced to writing and submitted before the Board.

Mr. BULLITT. There is one thing that I would call the attention of the Board to before adjournment. I understood this morning that the Judge-Advocate proposed to offer in evidence all the reports to be found in the volume marked "Executive Document No. 81 of the Thirty-seventh Congress." We have a copy of that book here. The first report is that of Major-General Pope and of his operations in Virginia.
1035 I understood from the Judge-Advocate a few moments ago that he did not regard that report as having been offered by him. We certainly so understood it, and supposed that that book, as a whole, was offered in evidence. I would like to have an understanding on the subject.

The RECORDER. If my language could bear any such construction at that time, I immediately said afterwards that I had merely used that book for my own convenience, and that those parts which I proposed to introduce would have to go to Washington to be verified by the official reports. I have not offered General Pope's report at all.

Mr. CHOATE. What reports have you offered?

The RECORDER. I will hand them all to you to-night.

Mr. BULLITT. We understand, then, that all are not to be offered. We want those specified that you do offer, so that we may determine what we shall offer.

The PRESIDENT OF THE BOARD. It will be understood that any re-

ports of an official character which may be desired by the Judge-Advocate or the petitioner will be received upon the same conditions as before expressed, so that they will all come in in that form.

STEPHEN N. WELD, recalled on behalf of the petitioner, was examined as follows:

By Mr. BULLITT:

Question. Do you recollect Broad Run, a stream that crosses the road?—Answer. Yes; it crosses at Bristoe Station.

Q. You recollect the stream?—A. I do.

Q. Do you recollect at what time the head of General Porter's column reached that stream on the 28th—about what time you got there?—A. I should say we got there about eight o'clock. I know it was not far from that time.

Q. You were with General Porter?—A. I was.

Q. And his staff?—A. Yes, sir.

Q. What time did the command get up?—A. To Broad Run?

Q. To the point at which you halted.—A. It got up practically at the same time—within five or ten minutes afterwards—that is, the head of the column.

Q. What time did the whole corps get up?—A. As I recollect, the corps was halted there to collect the stragglers and re-form them, and halted there some time while we rode ahead and met General Pope. I think the whole corps came there to where we met General Pope in the course of an hour after we arrived there, after we reached General Pope.

Q. Where did you find General Pope?—A. We found him at Bristoe, or close by there, right by the railroad.

Q. What time did General Pope leave there?—A. I cannot say definitely about that. My impression is he left there within two hours after we met him. Possibly less time than that; somewhere, I would say, about that time.

Q. The corps remained there until the next morning?—A. 1036 Until the morning of the 29th.

Q. Were you with General Porter on Sunday, the 31st of August; if so, where?—A. Yes; I was with him at Centreville, in the fortifications.

Q. Do you recollect whether he had a tent upon that day or not?—A. I don't recollect any tent. My impression is, that a portion of the day I think the latter portion of the day, we were for a time with some of the regular officers in a fly, but not a tent. I do not think he had a tent.

Q. No wall tent?—A. No; I am very positive we had none.

Q. Who were upon General Porter's staff that day?—A. Colonel Locke—and I think General Webb joined us that day—and Captain Monteith, and myself. I think we were the only staff officers with General Porter on the 28th, 29th, 30th, and 31st. I think General Webb joined us on the 31st.

Q. Were you with General Porter on that day?—A. Yes, sir.

Q. The greater part of the day?—A. Yes, sir.

Q. Do you recollect being absent from him at any time?—A. No, sir; I suppose I must have been, perhaps, a few minutes at a time.

Q. Do you recollect that General Porter gave to his staff at any time during that day directions not to salute or pay respect to General Pope?—A. He never gave any such order then, or at any other time; nothing in any any way resembling any such order.

Q. Or say anything at any time to indicate that he did not wish his staff or his troops to pay respect to General Pope?—A. I never heard anything of that sort at any time, and I know that Monteith never did from what he said to me at West Point.

Q. What sort of beard did General Porter wear at that time?—A. A full beard and mustache—black, trimmed rather closely.

Q. Not long and flowing?—A. No, sir.

Q. How about his uniform?—A. I am very positive that his uniform was that of a brigadier-general. I am guided somewhat by a photograph that I have that was taken at Harrison's Landing, I think, two days before we left there. I have that photograph at home. I saw it the other day. I don't recollect of his having a major-general's uniform until we reached Washington after this campaign.

Q. Was General Porter a profane man?—A. I don't know that I ever heard him swear.

Cross-examination by the RECORDER:

Q. What do you mean by swearing?—A. I don't think I ever heard General Porter say "damn." He possibly damned those teamsters of that morning of the 28th. I think that is the only time.

Q. How far is Broad Run from Bristoe?—A. I should think it was about a mile to a mile and a half, as I recollect it.

1037 Q. Towards Manassas Junction or towards Warrenton Junction?—A. Towards Warrenton Junction. I will not say Bristoe. I will put it this way: It is that distance from where we met General Pope that morning, which I supposed to be Bristoe Station.

Q. General Porter met General Pope at Bristoe?—A. What I supposed to be Bristoe Station.

Q. You rode ahead of the troops?—A. We were at the head of the column, and we left the troops, as I recollect it, at Broad Run, and rode ahead to what I supposed was Bristoe Station.

Q. Do you know what time the troops got into Bristoe Station?—A. Somewhere near eight o'clock. I would not like to say within an hour. But that is my impression. Did you say Bristoe?

Q. Yes.—A. I think they got in there later. I think they got there about somewhere within half an hour of nine o'clock.

Q. If General Sykes on the original trial had said that they got in there at half-past ten?—A. I don't know whether he was leading or not. It would make some difference what place he occupied in the column.

Q. You cannot recall whether Morel's or Sykes' division led up to Bristoe?—A. No, sir; I cannot.

Q. How long did the column remain halted at Broad Run before it moved out?—A. My impression is it was about an hour.

Q. When you say that General Porter never gave such instructions—— A. In my hearing, I should have said.

Q. Are you positive he wore a brigadier-general's uniform during the August campaign of 1862?—A. I feel very positive, as I say; I would not like to say it was absolutely so. I am guided somewhat by this photograph that I had.

Q. Do you know where that was taken?—A. That was taken, I think, two or three days before we left Harrison's Landing. It was taken in front of a tent, with all the staff—in front of headquarters tent.

Q. Do you know what straps he wore on his uniform?—A. My impression is that they were those of a brigadier-general. I am not positive.

Q. And all the reason that you have for that is the fact that when

down at Harrison's Landing he had a photograph taken in a brigadier-general's coat?—A. No, sir. I have an impression beyond that, but it is indistinct. This photograph, I should say, decidedly strengthens my impression.

Q. How long had he been a major-general at that time?—A. My impression is a month.

Q. Before the picture had been taken at Harrison's Landing?—A. That is my impression.

Q. Was it not a little longer than that?—A. It may have been.

Q. Are you prepared to swear positively that during the cam-
1038 paign, when he came under General Pope's orders, he wore a brigadier-general's uniform, with a brigadier-general's straps?—A. No, sir; I am not.

By the PRESIDENT OF THE BOARD:

Q. At any time from the 27th of August to the 1st of September, 1862, did you hear General Porter, in the presence of his staff or other officers, use any terms of official disrespect towards General Pope, or with reference to General Pope?—A. Never, in the slightest degree; never at any time. I should have remembered it if I had, and I should have told of it before.

Q. Did you, at the time spoken of, when under that canvas, or about there, hear any words that might have been misconstrued into terms of disrespect, or to a desire that proper honors should not be paid?—A. No, sir; I did not; not in any way or shape that could be taken in that way.

Q. Certain dispatches have been introduced in evidence sent about the 27th to General Burnside, making some comments in regard to the conduct of the campaign, &c. Were you cognizant of the dispatches at the time?—A. No, sir.

ALEXANDER S. WEBB, called on behalf of petitioner, being duly sworn, testified as follows:

Direct examination by Mr. BULLITT:

Question. Where do you reside?—Answer. 15 Lexington avenue, New York City.

Q. State the rank that you held in the Army.—A. Lieutenant-colonel and brevet major-general United States Army; brigadier-general and brevet major-general of volunteers.

Q. Were you on General Porter's staff on the 31st of August, 1862?—A. I joined him that morning.

Q. About what time?—A. I judge about an hour and a half after daybreak.

Q. And remained with him personally during the balance of the day?—A. Yes; and for several days afterwards.

Q. Do you recollect whether General Porter had a wall-tent that day?—A. I cannot recall any accommodation of that kind, but I do recall the fact that we needed covering on account of a drizzling rain; but tents I cannot recall having been with us. I am quite distinct about it, for I was without anything myself, having merely come out with my horse from Washington.

Q. What position on the staff did you hold?—A. I was then, within a few days, appointed inspector-general with the rank of lieutenant-colonel and chief of staff by agreement that had been made some time before, so I took that position at once.

Q. Do you recollect any order being given by General Porter to his

staff upon that day not to salute or pay respect to General Pope, at Centreville, or anywhere else, or any words to that effect?—A. He could not have given such an order in any way without my hearing of it; it could not have passed his lips without my hearing of it, and I heard nothing of that kind.

1039 Q. You are positive that he could not have said it during that day?

(Objected to by the Recorder as to form.)

A. It could not have been; he would not have dared to do it with us, particularly with me who had just joined him.

Q. Were was General Porter's command upon that day?—A. As we came from Washington on the road to Centreville the major part of it, to my present recollection, was on the left of the road, and on the slope of the hill towards the old Bull Run battle-field; it was somewhere, I think, in advance of where I had been in the previous fight of Bull Run, with Miles' division, and on that account I am very particular in locating it; I am quite certain it was on a slope of a hill; it was either the second or the first battle-field of Bull Run.

Q. How far from General Porter's headquarters?—A. I am quite sure it is some distance down below where we were; I cannot recollect exactly; there must have been a small portion of that command which, after we left the Centreville road, was during the night just as you pass the slope—may be a few hundred yards, for I was lost with my horse in the midst of them, and I could hardly get extricated before daylight, so that the location is founded upon my misfortunes of that morning.

Q. Could it have been possible for an order of that kind to have been given by General Porter?

(Objected to by the Recorder as improper.)

Q. Could such a thing as that sort of an order, as that of which I have spoken, have been given——

(Objected to by the Recorder.)

Q. [Resumed]. To the troops, through the staff officers of General Porter, and followed up by a disrespect on the part of the troops, without your knowing it?

(Question allowed.)

A. I do not think that order could possibly have been given without my knowledge of it; I have never heard of such a thing.

By the PRESIDENT OF THE BOARD:

Q. You do not recollect at what time you joined General Porter?—A. I think an hour and a half after daylight; I rode all night from the head of the bridge.

Q. On what day?—A. Sunday morning, the 31st; I did not reach there until a little before daylight. I was lost among these troops.

Q. Were you with General Porter during all that day?—A. Never left him after that.

Cross-examination by the RECORDER:

Q. You must have been very much fatigued by the time you got to General Porter that morning?—A. Very fatigued and very hungry.

Q. What did you do after you got up there, the first thing?—A. I think after extricating myself from the position of those men I found by accident General Warren, and after speaking with him I passed back to a house where I met Colonel Ruggles, my classmate, and I went into that house before I went to General Porter.

Q. How long did you stay there?—A. Until I was turned out; I think about ten or fifteen minutes.

1040 Q. Very unfortunate to be turned out of doors.—A. For the party who did it, certainly.

Q. Then where did you go?—A. I went to the cross-roads to find General Porter's headquarters and get some breakfast.

Q. Where did you get your breakfast?—A. At General Porter's headquarters.

Q. What kind of headquarters were they?—A. I think it was merely an assemblage of officers in the corner of a field, around a fire, cooking coffee.

Q. Are you quite sure as to that?—A. I asked one of the officers if it was in the corner of a field, and he said "Yes." That is the dim recollection I have after a lapse of time.

Q. Therefore your recollection is fortified and strengthened by reason of your having had this officer discuss the matter with you?—A. Entirely.

Q. Do you find any difficulty in recollecting the events of those days?—A. The morning was a remarkable one to me; I have never forgotten it; it was a peculiar morning.

Q. You were turned out of those quarters by some one superior to you in rank?—A. I was turned out on the ground that I was about to join General Porter, and could not be allowed to remain there; that was the statement made by General Ruggles when he came to me. I had seated myself at the breakfast table, and he said that a person governing the army had ordered me to leave the room because I was about to join General Porter; and I said to him "I pity you, Ruggles, more than myself; I leave at once."

Q. After breakfast what did you do that day?—A. I have a very dim recollection of what I did that day; I think I was lying around that day at headquarters.

The examination of this witness was here closed.

FREDERICK T. LOCKE recalled and examined as follows:

By Mr. BULLITT:

Question. Were you with General Porter at Centreville on the 31st of August, 1862?—Answer. I was.

Q. Then on his staff?—A. Yes, sir.

Q. And who were the other staff officers with him at that time, according to your recollection?—A. Colonel Webb, Lieutenant Weld, Lieutenant Monteith, Dr. Abbott, and myself.

Q. Do you recollect having had a wall-tent that day?—A. No, sir.

Q. Had you any tent? If so, state what the facts were about that.—A. Falling back, after the battle of the night of the 30th of August, we got into Centreville; everything was in a very confused state. I got into the corner of a field with General Porter, General Sykes, and three or four staff officers; there was Dr. Abbott, Lieutenant Weld, Captain

1041 Monteith, and myself; I think General Sykes had one staff officer. We built a fire of rails, and lay down in the corner of the fence, and slept there until break of day, when it began to drizzle rain, and we got up. As soon as it got light we found our headquarter wagons; they were a short distance off; we went across a small field, and there we got breakfast. We remained there for some time, when the orders came to have everything sent to the rear; and all the equipage was immediately sent to the rear, and we had nothing whatever except what we stood in, and our horses.

Q. During the afternoon of Sunday you had no wall-tent?—A. Not

at all; I recollect this very particularly, because the state of my system has always refreshed my memory. I think it is the only time in my life when I felt the cravings of hunger, for I had had nothing to eat from early breakfast Friday morning until Sunday morning; and I did not get another meal until Tuesday noon.

Q. Did you hear General Porter give directions to his staff officers that day not to salute or pay any respect to General Pope at Centreville, or anywhere else?

The RECORDER. I must object to the form of this question as being improper and leading.

(Objection overruled.)

A. General Porter never gave such instructions, I am positive; General Porter is a gentleman, and I never knew him to do an ungentlemanly thing in my life. If such instructions had been given I should certainly, as his adjutant-general, have known something about it.

Q. Why was it that you had so little food; you say you had only a meal between Friday and Tuesday, and that was on Sunday morning; how did that happen; had you no provisions in the army?—A. No, sir; the whole army was in the same condition.

The RECORDER. I should like to make an objection to that line of examination.

(Question withdrawn.)

Q. Do you recollect what sort of uniform General Porter was wearing at that time?—A. I do.

Q. What was it?—A. The uniform of a brigadier-general.

Q. When did he first put on his major-general's uniform?—A. I think after we got back to and in the defenses of Washington, when we had our headquarters at Arlington House.

Q. What sort of a beard did General Porter wear at that time?—A. A full black beard, closely trimmed.

Q. In your testimony the reporter has you saying—the question was, "How far did you and General Porter, being in advance of the troops, get beyond Manassas Junction toward Centreville?" and the answer as written is, "We got to the brick house called a warehouse which was a little below the junction." Is that incorrect; do you mean Weir's house?—A. Maybe I was mistaken in the name.

Q. Do you mean to say it was a warehouse?—A. No, sir.

Q. What did you mean to say?—A. I have always understood that that was the Weir house, belonging to a man by the name of Weir or Ware; it was known as the Weir house or the Ware house.

1042 Q. Do you recollect the hour in the morning of the 28th when you reached Broad Run, near Bristoe Station?—A. About eight o'clock.

Q. About what time did you see General Pope?—A. Almost immediately after; it was a very short distance, that is comparatively short, from the time we crossed the run until we found him sitting on his horse on a slope of a hill beside the station.

Q. What time did General Pope leave?—A. I think he was about there for two hours or more.

Q. What time did General Porter's command get up?—A. After we met General Pope I was sent back by his authority with cavalry to cross Broad Run to order the trains parked—the commanding officer of the cavalry was to see the order executed. The head of our column was then approaching; they halted there so as to get closed up, because the column was necessarily very much strung out by reason of the difficulties of marching during the night. I presume before the head of the column

struck that place where they went into position it may been between nine and ten o'clock.

Q. What time did the rear get in?—A. I think that corps must have been all up by noon.

Cross-examination by the RECORDER:

Q. You have taken a very great interest in this case, have you not?—A. Naturally so.

Q. Had a great deal to say about it?—A. I have sometimes.

Q. And your feelings are very strongly enlisted in behalf of the petitioner?—A. In the cause of right.

Q. Answer my question, yes or no?—A. Yes.

Q. And you have a distinct recollection of pretty much everything that you have been testifying to here, both now and heretofore, before this Board, and also before the original court-martial, have you not?—A. Tolerably so.

Q. You had your tents with your headquarter wagons, did you not, on the 31st?—A. I don't know; wagons were scarce about that time.

Q. Usually with your headquarter wagons you had everything that you required for headquarters, did you not?—A. We had previous to that time.

Q. You don't recollect whether they were there then or not?—A. I do not.

Q. When you moved out from Warrenton Junction on the morning of the 28th of August, 1862, at Bristoe, which division led?—A. As near as I can recollect it was the first division, General Morell's, my impression is, because I recollect that the head of the column lit candles in order to see their way, and find the road.

Q. Are you quite positive that it was not Sykes's division that moved out first?—A. I give my impression.

Q. You are not positive?—A. No, sir; I give my impression from
1043 the fact that it was usual in marches for the division that was in the rear the day preceding to take the right of the column in the next day's march.

Q. So you come to that conclusion merely on general principles?—A. Yes, and the fact of candles being lighted at the head of this column; that I recollect distinctly.

Q. So you do not recall whether it was Sykes's or Morell's division?—A. It was in Gibbon's brigade of Morell's division.

Q. Suppose that General Sykes or General Morell had testified to arriving at Bristoe about ten o'clock in the morning, in the original court-martial trial, how do you reconcile that with your statement that they reached Broad Run at eight o'clock?—A. I said shortly afterward, when we joined General Pope, we were there a short time; General Porter was in conversation, and then I went right back.

Q. Then the column came right forward?—A. It came right forward. Time passes pretty rapidly when troops are halted and closing up.

Q. Do you know when the last of all the command got into Bristoe?—A. I do not.

Q. Some of them got in pretty late in the day, did they not?—A. I do not know that, because I was very likely busy about the duties of my position.

Q. Then you were not always with General Porter when busy with the duties of your office?—A. Usually, when on duty, I was supposed to be very near his person, when he was on the ground.

Q. But as a matter of fact you were not always with him when engaged in the performance of your duties?—A. I do not know as I was.

Q. What day in the week was the 31st?—A. Sunday.

Q. Were there not a good many officers up there during that day talking with General Porter?—A. I think during the afternoon of that day there were quite a number where we were, around the earthworks; groups of officers would naturally collect when there were not active operations going on.

Q. Don't you recollect that on that day, on several occasions, you took orders to different parts of the corps?—A. On that day I don't think I did.

Q. Would you be positive of that?—A. I think I did less duty in that respect that day than usual.

Q. Are you positive that you did not go off on such duties?—A. I may have gone once or twice. I recollect going to General Pope once, I think it was in the afternoon of that day.

Q. Do you recollect going to anybody else?—A. I do not.

Q. Did you take particular note as to who came up to headquarters during the day, and remained there?—A. I do not recollect now; I don't know as I ever charged my mind with it.

Q. Were you listening to General Porter's conversation all day?—A. Whenever he was about.

1044 By the PRESIDENT OF THE BOARD:

Q. During that period of time, say from the 27th of August to the 1st of September, did you at any time hear General Porter use language officially disrespectful to General Pope?—A. No, sir.

Q. In speaking of or concerning General Pope's operations?—A. No, sir.

Q. Did you see the dispatches which he sent to other generals during that period, as a rule?—A. I don't think I saw all of them. I may say, as a rule, I did not; that is, except to a subordinate authority.

Q. You had the custody of the records of his orders to his subordinates?—A. Yes, sir.

Q. And generally his correspondence with others?—A. Yes, sir.

Q. What report did General Porter make at any time in the evening, or during the night of the 29th of August, of his operations of that afternoon and evening?—A. I really do not recollect, for he wrote most of his dispatches himself personally.

Q. Do you know of his making any report or sending any dispatch to General Pope or General McDowell after the operations of that evening ceased?—A. I do not recollect.

By Mr. CHOATE:

Q. Do you know anything about an order sent by Captain Pope, a message or dispatch, and a return dispatch from General Porter by Captain Pope to General Pope?—A. I understood there was one sent, but it must have been in my absence, when I had gone by orders of General Porter to General Morell.

The examination of this witness was here closed.

The RECORDER said: I have just received from the judge-advocate of the Department of Dakota the interrogatories which I prepared and sent to him, with the answers of General Thomas L. Rosser, duly sworn to. I invited the attention of the counsel for the petitioner to these before sending them, and asked that cross-interrogatories might be prepared. I sent them by direction of the Board, as the Board will recollect. Counsel for the petitioner said that they would protest. I have here, however, the replies from General Rosser, and therefore assume

that I have given the due notice which is usually required by the Articles of War in military procedure in the matter of interrogatories.

The Recorder hands the document to petitioner's counsel.

Mr. BULLITT. The Board will recollect, I presume, that when this matter was before them we offered to go out to Minnesota for the purpose of cross-examining the witness. It is true that the Judge-Advocate stated to me that he had been directed by the Board to send these interrogatories. That was not done while the Board was in session, or when we were present, so far as testimony is concerned. We wish to send cross-interrogatories. We will do that to-day.

The PRESIDENT OF THE BOARD. That will remain, then.

The RECORDER. It was my intention to put it upon the record.

The PRESIDENT OF THE BOARD. We prefer not to receive it until it is completed. The Recorder will bear in mind that this authority
1045 given to him at the time was a tentative effort to see whether we could in that way obtain information from General Rosser. The interrogatories may be shown to petitioner's counsel, and it can then be determined whether, by cross-interrogatories on their part, we can make up the record of Rosser's testimony.

The RECORDER. Suppose General Rosser should go off to a point where he cannot be reached?

The PRESIDENT OF THE BOARD. It is possible that the whole thing will fail.

The RECORDER. Then the effort that I have made will result in no benefit at all.

The PRESIDENT OF THE BOARD. Possibly that may be the result; but we hope not. We want to avoid the necessity of sending commissioners there to examine General Rosser. It is hoped that in this way we will get his statement in a form that will be satisfactory.

The RECORDER. This mode is the usual mode employed upon courts-martial.

The PRESIDENT OF THE BOARD. We will consider what we will do with it at the proper time.

The Board then, at two o'clock and twenty-five minutes, adjourned until Thursday, October 24, 1878, at ten o'clock.

A. SANDERS PIATT, called by the Recorder, and examined (in New York, October 19, 1878, present the Recorder, and Mr. Maltby, of counsel for petitioner), being duly sworn, testified as follows:

By the RECORDER:

Question. Where do you reside?—Answer. West Liberty, Logan County, Ohio.

Q. What rank did you hold on the 29th of August, 1862?—A. Brigadier-general of volunteers in the Army of the United States.

Q. Whose division?—A. Sturgis' division.

Q. Were you at Manassas Junction on that day?—A. Yes, sir.

Q. From what place had you come there?—A. I had marched from Warrenton Junction; left Warrenton Junction on the 28th.

Q. From Manassas Junction where did you go?—A. I was ordered up the Thoroughfare Gap road, and I marched up, as near as I could judge, between three and four miles. I cannot tell exactly the distance. There I was halted by General Sturgis on the left of the railroad.

Q. Left of what railroad?—A. The Manassas Gap Railroad.

Q. That road that you went up, what place did it go to or pass through?—A. As near as I know, it went through Manassas Gap.

Q. Were there troops in front of you?—A. There were troops in front of me. When I came to a halt, there was a brigade or more than a brigade in front of me; they passed a little in front, in fact out of sight of where I was halted.

1046 Q. Whose troops were they?—A. I could not say.

Q. Did you hear any firing?—A. Yes; I heard firing from 10 o'clock in the day. There was continued firing from the time I left Manassas Junction, according to my remembrance of it, up to the time I halted, and afterwards.

Q. Where was this firing?—A. It was to my right and front, as it were. There was less firing out where I was halted. While I was standing there I had time for observation. It was to my right and front, and also to my right and back; I seemed to be perpendicular to two parallel lines of firing.

Q. That which was more nearly in your front, what was it?—A. I supposed it to be a Confederate force. While I was standing there were three shots fired, and, as I judged at the time, they were to my right and front, on the right of the road, as I faced up the road. There were three shots fired there that I could see the smoke rise from the guns from where I stood.

Q. Apparently a Confederate battery?—A. Yes; where I stood there was quite a number of trees; then there were patches of road; there was an opening, and then there was a screen of trees or timber, not very tall, that screened the position of this artillery which was fired from there. At the time of seeing this position, it struck me as a very favorable one. I did not know at that time that it was the Confederate artillery.

Q. What did you next do?—A. The next I did, I was ordered to march to Manassas Junction from that point by General Sturgis.

Q. From the position that you were in when you saw that battery open to your right front, what was your opinion as to your ability to capture that battery?

(Objected to.)

Q. What was the character of the country between you and the battery?—A. It was up hill, slightly an elevation.

Q. Go on as near as you can recollect and describe the country.—A. The country was undulating, rolling slightly, not very much, from Manassas Junction up to the point I had reached. There was a little depression in the ground that I had passed; and it continued, as I recollect, to rise gradually up to this point where I saw these three columns of smoke that rose from the artillery that was fired.

Q. Did you see any other Confederate force there?—A. I saw no Confederate force. I only saw this battery.

Q. Did you form any estimate at the time as to what force would be sufficient to take that battery?

(Objected to.)

A. I could not form that estimate, for I did not see the force before me. The only idea that struck me was the feasibility of attacking it.

Q. In the position in which that battery was placed, what opportunities presented themselves to you from your observation, made at the time, for attack?—A. As the ground was interspersed over the road with timber, a little opening, and beyond was a screen of woods, and that could have been approached very easily, and any force by open or-

der passed through, it struck me that the battery might have been assaulted without great difficulty.

1047 Q. After you marched back to Manassas Junction, what were the next orders you received?—A. I received orders to march back to Manassas Junction. I marched back towards Manassas Junction, but before I reached Manassas Junction I was overtaken by an order to countermarch and march back again, which I did, back to the original position.

Q. What time was that when you got back to your original position?—A. It was along towards the close of the evening.

Q. What did you do then?—A. I then was ordered into camp for the night.

Q. How long during the day did you hear this firing that you say you heard off to the right?—A. I think it was about from ten o'clock in the day, as near as I can recollect, that there was a continued firing, more or less.

Q. Up to what time?—A. I think the firing, if I recollect correctly, was until I got back, or nearly back, to the original position. They had ceased before I got quite back.

Q. What was the firing that you heard?—A. My remembrance is that it was artillery firing that I heard.

Q. State what force constituted your brigade at that time—I mean with you.—A. It was constituted of the Eighty-sixth New York, commanded by Colonel Bailey, and the Sixty-third Indiana, commanded by Captain Bruce.

Q. Where was the remainder of your brigade?—A. I left the remainder of my brigade at Alexandria—the One hundred and twenty-second Pennsylvania.

Cross-examination by Mr. MALTBY:

Q. Was the remainder of your brigade left at Alexandria prior to your being placed under General Porter's orders?—A. I don't know when I was placed under General Porter's orders. I must correct that in this respect: On the morning of the 30th I received an order directed to General Piatt or General Sturgis, as I recollect, to report to General Porter; that was the 30th; that was the first intimation I had.

Q. On what day did you leave Alexandria, leaving those troops behind you?—A. I think it was the 25th.

Q. How many troops had you with you present for duty on the 29th of August, 1862?—A. I think somewhere about one thousand, as near as I can recollect.

Q. If there is a report filed, showing a presence of between eight and nine hundred, would that be a correct present for duty in the battle of the 30th, showing the losses of the 30th?—A. In the battle of the 30th, if I recollect right, we lost in the charge down the hill 140 men.

Q. Is the report correct?—A. Yes, the report is correct.

Q. From where did you march on the 29th August, 1862, beginning in the morning?—A. The exact point I could not tell you.

1048 Q. About where?—A. On the march of the 28th from Warrenton Junction we got behind a wagon train, and were detained until eleven o'clock, and had a night march before we camped; but I think it was somewhere about Bristoe Station.

Q. What time did you march from Bristoe Station in the morning?—A. It was pretty early in the morning; I cannot give you the exact hour; it was early in the morning that we marched from Bristoe Station, so that we reached Manassas Junction about noon.

Q. How long did you stay there?—A. At Manassas Junction we halted a very few minutes to get a little bite of something to eat and rest the troops a very short time; and then Sturgis ordered me to march up the Manassas road, and I did so.

Q. How did you recognize it to be Manassas Junction?—A. I was told so.

Q. Describe the surroundings.—A. At Manassas Junction, as I recollect it, the road runs that way [illustrating]. We halted between the roads in the angle.

Q. How long did you remain there?—A. I suppose twenty minutes or half an hour.

Q. Might it have been longer?—A. We stopped there to take lunch; it might have been longer.

Q. Then in which direction did you go?—A. From that we marched right up what we call the Gap road. I recollect it as the Gap road.

Q. In what position was the railroad as you marched up—the Manassas Gap Railroad?—A. We were on the right-hand side of the road as we marched up, as I recollect.

Q. How far did you go on the right-hand side?—A. We were on the right-hand side of the road when I met General McDowell coming down.

Q. Did you remain on the right-hand side of the road?—A. No, sir; when I was halted I was on the left of the road.

Q. How long after you met General McDowell did you halt?—A. I judge that I met General McDowell about half-way between the Junction and the point I halted at.

Q. Did you pass any troops in marching, where General McDowell was when you met him?—A. His troops were in his rear marching down —quite a body of troops marching towards Manassas Junction; that is, on a road in an opposite direction to myself.

Q. Did you march in the road after that?—A. That is my remembrance.

Q. How was the country to the left of you, and how to the right?—A. We were marching through timber—there was timber to the right and timber to the left of us. I think it was interspersed all along up from the Junction.

Q, Do you recollect whether the timber on the right was dense or not?—A. It was not very dense timber.

Q. Could you see the railroad from the road as you marched after meeting General McDowell?—A. No, sir; it was not very dense timber.

1049 Q. Could you see the railroad?—A. Yes; parts of the time we could see the railroad.

Q. Did you understand that General Porter's troops, the Fifth Corps, were in your front that day?—A. I did not.

Q. Was the brigade that was in your immediate front regulars?—A. So understood.

Q. Were there any regulars behind you?—A. No, sir.

Q. Were there any troops behind you except those that you saw with General McDowell?—A. None that I know.

Q. When you halted were you stationed on the outside of the road?—A. I was to the left of the railroad.

Q. I mean the dirt road.—A. The dirt road was to the right, as I recollect. I was on the left—not on the dirt road.

Q. You were not on a dirt road at all?—A. When I halted I was not on a dirt road. [Witness looks at the map.] I marched from Manassas Junction, as I recollect, up *here*. This does not correspond with my re

collection. I was under the impression that I was on the right of the road. As I recollect, from Manassas Junction I took the dirt road, and followed up to some point in *here* [neighborhood of Gaskins's], and then crossed the railroad. My remembrance is that I halted just in *here* [neighborhood and east of Bircket's] to the left of the road. Now, we marched through this timber, and my remembrance is that we were on the right of the railroad when we halted, and only a short distance from it.

Q. Did you leave your command and go forward?—A. No, sir; I remained with my command.

Q. How long did you remain there?—A. I should judge about thirty minutes that I was halted; that is, when I was halted by General Sturgis.

Q. Did you remain there thirty minutes afterwards?—A. I think so. I think it was probably thirty minutes before he returned and gave me further orders.

Q. Did you see the guns of the battery in your front?—A. No, sir; I simply saw the smoke.

Q. Where did you see it?—A. I stood to the left of the road, and, as I was facing up the road, the battery was to my right and front on a rise, and it was, as I judged at the time, not over 200 yards from me.

Q. Did you cross a stream before you halted that time?—A. I don't recollect that I did.

Q. Did you pass any regulars on your march, or did you remain in their rear?—A. I passed no troops except McDowell's force that I recollect. In marching up here, my remembrance is, I was to the right of that road, and, when I crossed, I was not over 50 yards from the railroad when I was halted.

Q. Did you see this smoke over the trees?—A. It was over the trees. I could not see the artillery; it was over a screen of trees to my right and front. I was on the left of the road, and not over 50 yards from the railroad.

1050 Q. You are confident of that?—A. Yes.

Q. And could see it?—A. Yes. I could see the railroad.

Q. Now, if the neighborhood of Bircket's is in reality between a quarter and half a mile from the railroad, and a dense wood was between your position, as indicated by you, and the railroad, according to the best of your recollection, would that be the location where you halted?—A. I don't think it is.

Q. How far did you march backward?—A. About two-thirds of the distance from my position there, as I judge, to Manassas Junction, before I was ordered back again.

Q. How long did your march take you?—A. When I got back it was in the evening.

Q. How long did that march take you on your return?—A. I cannot say how long it took me to go down here and back again, but when I returned there it was along toward the close of the day. I did not say I was at Bircket's or at this point, but I was on the railroad.

Q. Had you passed through much woods before you came to that location?—A. I passed through a good deal of woods. I think most of it was woods until I reached this point; and at this point that I was halted the timber was less thick, and beyond it there was a little open, as I described to you, with a screen of bushes up the slope, and it was there that I saw this firing.

Q. Do you know that that was a Confederate battery at all?—A. I judge it was from the direction of the fire, it being perpendicular to where I stood.

Q. Your line formed a right-angle with the two lines?

[Witness indicates the relative situation.]

Q. Was that the only way you inferred that it was a Confederate battery?—A. Yes, sir.

Q. Were there any batteries near you that responded?—A. No, sir.

Q. There was no response?—A. None that I heard; those were the only three shots while I was there.

Q. Do you recollect passing any houses after meeting General McDowell?—A. No, sir; I do not.

Q. Do you recollect Bethlehem Church?—A. I do not recollect that.

Q. Whereabouts did you encamp that night?—A. It was nearly at the same place that I was halted the first time.

Q. Were you in the vicinity of any large body of troops when you encamped?—A. Griffin's brigade was right over the railroad from me when I camped that evening.

Q. Where was Sykes's regulars?—A. I will state this: it was either Griffin's brigade or Sykes's regulars.

1051 Q. Over the railroad—to your left or right?—A. That would be to the right of the railroad. In taking the right I am always facing toward the gap.

Q. Did you understand that General Porter was in that vicinity at that time?—A. I didn't know anything about General Porter.

Q. If you were encamped in the vicinity of Bethlehem Church, and if that had been the vicinity in which you had halted before, was the distance that you retired from that position towards Manassas, and marched back again, not more than half the distance between Bethlehem Church and Manassas Station?—A. I did not know where Bethlehem Church was, nor can I give you an answer to that distinctly, because my recollection is just what I saw that day, and as it impressed itself upon me at that time.

Q. If the actual distance from the position to which you arrived, and from which you were ordered back, was two and a half miles only, what do you infer was the distance you marched back?—A. In marching from Manassas Junction to the point where I was halted, I judged that I marched between three and four miles; and I judged in marching back that I had marched two-thirds of the distance back. I am not certain as to the exact distance.

Q. The official return of your force on the 30th would represent, together with the killed, wounded, and missing that day, all that you had at Manassas Junction, when you made this march of which you have testified?—A. No doubt of it.

Q. Correctly?—A. Yes, sir.

Q. Did any of the troops march in your front back to Manassas Junction at the time you marched there?—A. No, sir.

Q. Or towards Manassas Junction?—A. Not that I recollect of.

Q. Did General Sturgis go back with you?—A. I did not see him. His orderly overtook me and gave me the order to return.

Q. Where were you on the morning of the 30th?

Mr. MALTBY. I shall object if this is drawn out in reference to the charges of which General Porter was found not guilty.

By Mr. MALTBY:

Q. What time, in the afternoon, about, with reference to sunset, did you come to the position where you slept?—A. When I returned I judged it was between four and five o'clock.

The examination of this witness was here closed.

Having read his deposition, the witness desired to add the following:

In answer to the question, on cross-examination, "You were not on a dirt road at all," the word "here," underlined, occurs three times in the deposition. It refers, as expressed, to the route of march, as I was trying to trace it up the right side of the railroad. I was puzzled at not finding a road laid down upon the map on the right-hand side of the road, as I remembered the route. The points named were suggested by Mr. Maltby, and were not recognized by my remembrance of the route. The context will fully explain this answer. Had the examination been before the Board, they would clearly understand the tracing I gave the map.

A. SANDERS PIATT.

Also the following:

My only guide when halted as to position was the firing; it placed me on the flank of the two armies, the parallel lines of their position being perpendicular to my
1052 right. While halted, I expected to be ordered into the fight; hence I observed the ground around me actually while listening to the firing. The only point on the map that suggests the position by timber and opening is that west of Carraco's, south of the cross-roads, and left of the railroad. The screen of timber to the northeast of this position would give the impression upon my mind as I saw it, save there were scattering trees along and over the road. The smoke of the battery as seen would be at Hampton Cole's, northeast of the position. Instead of being ordered to advance upon the enemy, I was ordered to retire.

A. SANDERS PIATT.

B. S. WHITE, a witness called by the Recorder, sworn and examined in the city of Baltimore Md., October 22, 1878 (present, the Recorder, and Mr. Maltby, of counsel for the petitioner), testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Baltimore.

Q. What position did you hold in the Confederate army of Northern Virginia on the 27th of August, 1862?—A. I held the position of major in the assistant inspector-general's department, on Major-General J. E. B. Stuart's staff.

Q. Where were you on the night of the 27th?—A. We were at Manassas Junction.

Q. Do you know of any movements of troops about that time?—A. General Jackson's command was moving on that point, and were present there at that time.

Q. When did they leave there?—A. The next day.

Q. Where were you on the morning of Friday, August 29, 1862?—A. Near Sudley Church.

Q. Do you know anything that transpired in your immediate vicinity on that morning? If so, what was it? [Map shown and explained to witness.]—A. On that morning we were looking south; there were some troops appeared on our left, Federal troops, and there was some little confusion in our ambulance train just north of Sudley Springs.

Q. What then transpired?—A. There were some artillery and troops put in position to open on the enemy in *that* direction (witness indicates that the artillery was west of Sudley Church), firing east across Bull Run.

Q. Do you know whose battery that was that was put in position?—A. Pelham's battery; he commanded the Stuart horse artillery.

Q. What then transpired?—A. Major Patrick was ordered to charge, and did charge the enemy in that direction, and lost his life there.

Mr. MALTBY. Is the witness testifying of his own observation?

The WITNESS. I am.

Q. Was he killed outright?—A. I saw him after the fight of the 30th was over; he was alive on the 30th. It was on the 29th that he was wounded; he was alive late in the day of the 30th, because I saw him

and talked with him in bed, and I remarked to him that I hoped he would recover; he said no, that he was mortally wounded.

Q. At whose house was that where you saw him?—A. I do not recollect the name of the party.

1053 Q. That morning after Major Patrick had those orders to charge, what did you do?—A. The enemy were driven away.

Q. Then what was the next event that transpired?—A. We moved off across the country to find out what had become of Longstreet's corps; we moved off in this way, towards Thoroughfare Gap.

Q. Did you find General Longstreet's columns or corps advancing?—A. We did, between Hay Market and Gainesville.

Q. What did General Stuart then do?—A. General Stuart then threw his command on Longstreet's right and moved down with his right flank in the direction of Bristoe to Manassas Junction.

Q. What did you then observe?—A. We took the road leading directly down the Manassas Gap Railroad; there is a road running parallel with it.

Q. How far down did you go?—A. General Stuart threw his command on the right of Longstreet, and passed down the Manassas Gap Railroad to about that point [west of Hampton Cole's; point marked "W"].

Q. Then what did you do?—A. We discovered a column in our front—discovered a force in our front coming from the direction of Manassas Junction to Bristoe.

Q. What sort of a point was that where you discovered this column coming, so far as observation is concerned?—A. It was a good point for observation; a high position, elevated ground. We could see Thoroughfare Gap and Gainesville and all the surrounding country.

Mr. MALTBY. Do you refer to the point where he was?

The RECORDER. Yes; where they saw this column approaching.

Q. How near the point on the railroad was it that this commanding ridge is?—A. Not very far from the railroad; I suppose a half or three-quarters of a mile—something like that.

Q. Could you indicate about where you think it was?—A. I think it was about *there*. [Marked thus: +.]

Q. You saw the column of troops advancing?—A. Yes.

Q. Did you at that time judge about how much of a column it was?—A. I did not see it all, but it seemed to be a very large body of troops.

Q. What did General Stuart then do?—A. He put a battery in position on that hill.

Q. Did you receive any instructions at that time?—A. I did.

Q. What were they?—A. My instructions were to put a battery in position there and open on the column advancing in this direction. His instructions to me were to go to General Jackson and report the fact of this column moving in that direction.

Q. Did you go and do it?—A. I did; I went across *here*. [Parallel with Pageland lane.] General Jackson's corps was here; that is, his command was along the Independent Manassas Gap Railroad,

1054 and the batteries were posted right on a range of hills in the rear of that. I found General Jackson on a range of hills just in the rear of his battery.

Q. Having reported, what did you then do?—A. I then started to return to General Stuart.

Q. Where did you go?—A. I tried to take a little short cut going back to him. I made a little detour; I passed where there had been a skirmish the evening before.

Q. Did you find any dead and wounded there?—A. I did.

Q. North of the pike or south of the pike?—A. On the north side.

Q. Did you find General Stuart at once?—A. It was some time before I found him; a half or three-quarters of an hour.

Q. Did you halt on the way going back?—A. I passed a little time with General Jackson after I reported to him, because the batteries were engaged; his batteries were on Stony Ridge. (Witness indicates a point back of the words "Stony Ridge.") His line of battle was along the Independent line of the Manassas Gap Railroads; there was a battery that came out about the point of that woods (just northwest of the Mathews house and west of the Sudley pike); just about that point there was a battery from the Union side that came out there and took position, and I staid there some time watching the artillery duel between the guns stationed *here* and that battery. Then going back to General Stuart I took a little short cut and passed over some ground where there had been a fight the evening before, and there was some dead on the field. In going back I met a cousin of mine who commanded a battalion connected with Ewell's corps, which was engaged in this fight; he was reconnoitering; I went along with him, and saw what was in my front; I suppose it was half or three-quarters of an hour, or maybe an hour, before I got back to General Stuart.

Q. What regiment did Colonel Weed command?—A. A battalion known as Weed's battalion.

Q. Whose brigade and division?—A. At that time he was acting with Ewell, and afterwards he was with Rosser's brigade.

Q. Do you recollect whose brigade of Ewell's division he was in?—A. He was commanding the cavalry connected with Ewell's corps; in other words, at that time his was looked upon as an independent command, and afterwards he was assigned to Rosser's brigade in Stuart's cavalry corps.

Q. When you got back to General Stuart, where was he?—A. Where I left him, on that hill.

Q. At that time where was General Longstreet's command?—A. They had come down and were forming *here*. (Witness indicates a point back, westerly of Pageland lane.)

Q. About what time of day was it that this affair occurred at Sudley Springs; before you and General Stuart started to cross the country towards Thoroughfare Gap?—A. Early in the morning.

Q. At what would you fix the time?—A. I suppose eight or nine o'clock in the morning.

1055 Q. Did you remain at this point with General Stuart after you got back on this hill?—A. I did.

Q. What became of this column of troops that you saw advancing?—A. I don't know what became of them; they disappeared from our front.

Q. Do you know of any other position being taken up by General Longstreet's command, during the day, in advance of the position that you have indicated; if so, when and where? You indicated a position back of Pageland lane.—A. I do not.

Q. How long were you down in the neighborhood of this hill which you have marked with a cross, during that day; up to what time?—A. We were down there the greater part of the day; we were on the extreme right all the time afterwards. The cavalry remained on the extreme right until the morning of the 30th.

Q. Do you know of any other measures taken to retard the advance of this column of troops from the direction of Manassas Junction or Bristoe that day by General Stuart, other than the planting of that battery

in that position?—A. I do not. Before that battery was put in position Robertson's brigade of cavalry and Rosser were engaging the enemy in our front. When that battery was put in position and opened on the enemy it checked them, and they retired. Then General Stuart told me to go to General Jackson and report the fact that this column was advancing in this direction.

Q. During that day what sort of an action was going on, on the 29th, to your knowledge?—A. There was very heavy fighting going on up here in Jackson's front.

Mr. MALTBY. Did you see it?

A. I heard the musket firing, and I heard artillery.

Q. This engagement which you speak of between Robertson's cavalry and the enemy—what was it?—A. It was a skirmish simply.

Cross-examination by Mr. MALTBY:

Q. What time did you rise on the morning of the 29th?—A. Very early in the morning.

Q. Daylight?—A. About daylight.

Q. Where did you get breakfast?—A. Near Sudley Church or Sudley Springs.

Q. How long after you arose was that?—A. That is where we were that morning. I do not recollect whether we got any breakfast or not.

Q. What did you personally do before there was a disturbance in your ambulance train?—A. I do not recollect having performed any duty.

Q. Was it immediately after you arose?—A. It was eight or nine o'clock in the morning.

Q. How do you fix it as eight?—A. Somewhere in the neighborhood of eight.

Q. Have you a distinct memory as to that being the hour?—A. That is my recollection of it.

1056 Q. Did you look at any watch?—A. No, sir.

Q. Do you fix it by a sequence of events after your rising that morning?—A. Of course; by a general memory of it.

Q. Would you swear it was not as early as six or seven?—A. It was not that early.

Q. What time do you think you met General Longstreet between Haymarket and Gainesville?—A. It was about eleven o'clock.

Q. Was General Longstreet at the head of his column?—A. He was near the head of the column.

Q. Were there many troops in front of his command?—A. Not many.

Q. Were they advancing?—A. They were.

Q. Rapidly?—A. They were marching at an ordinary pace.

Q. State the style of march; how many front?—A. They were marching in column.

Q. How many front?—A. Marching in column of regiments, perhaps four abreast.

Q. Were they in close order?—A. Yes, sir.

Q. Would you swear it was eleven o'clock?—A. It was about eleven o'clock.

Q. You are confident that none of Longstreet's forces had passed through Gainesville before eleven o'clock?—A. I don't think they had.

Q. Have you had your recollection refreshed as to hours in any manner since that day up to this present moment?

The RECORDER. He has had a consultation with me before now.

Q. I want to know whether he has had his recollection refreshed.—A. I have thought over it.

Q. Have you had your memory refreshed by any statements or memorandum since that day as to the hours and times?—A. I have read some of the reports since.

Q. Did they state the hours?—A. I think not.

Q. What reports have you read?—A. I read last night the periodical that is published in Richmond called the Southern Historical Society Papers.

Q. Did that state any hours?—A. I cannot call to mind whether it did or not.

Q. Did you have a watch at that time?—A. I had.

Q. Did you look at the watch to fix any hours?—A. I did not.

Q. Those hours are stated purely from memory?—A. From memory simply.

Q. How did General Stuart throw his cavalry to the right of Longstreet's column?—A. By passing through Longstreet's line of march.

Q. Were they passed through in column?—A. No, sir.

1057 Q. How?—A. By single file.

Q. What became of the cavalry then?—A. They took the road leading parallel with the Manassas Gap Railroad, and moved down in the direction of Manassas Junction.

Q. Did you remain with the cavalry or did you go with General Stuart?—A. I was with General Stuart.

Q. Did General Stuart have any conversation with General Longstreet or General Lee?—A. He did.

Q. About where was that?—A. At the point where we met Longstreet's column.

Q. Was that while you were on the march, or was it while you were personally stationary?—A. We were stationary at the time, of course, when we met Longstreet's column; they were together when this conversation took place. General Lee passed his command on the road, and Longstreet then moved down with Stuart, and they then and there moved down in the direction of Manassas Junction.

Q. How long a conversation did General Stuart have with General Lee or General Longstreet?—A. Ten or fifteen minutes.

Q. Did you converse at all with the men?—A. No, sir.

Q. Any of the command?—A. No, sir.

Q. How long was it before you arrived at the point marked "W" by you on this map?—A. It could not have been over three-quarters of an hour or an hour.

Q. Then about what time would that make it when you arrived at the point marked "W"?—A. Between 11 and 12 o'clock.

Q. Nearer which?—A. Nearer 12 than 11.

Q. Where were Rosser's cavalry at that time, if you know personally?—A. I judge they were right in *here*. (Witness indicates a point about southwest of Hampton Cole's.)

Q. Were they all there, do you know?—A. Yes; they were there.

Q. All?—A. All.

Q. Do you know whether Rosser had an engagement at that time, during which he captured forty cavalry?—A. I do not know.

Q. Do you know of any engagement near Gainesville in which Rosser captured forty cavalry?—A. I do not.

Q. You say that the distance from the railroad, or from the point "W" to where those two cannon or that battery were posted by General Stuart, was from half to three-quarters of a mile; this map being on a scale of three inches to a mile, you have marked it within half an inch, which would be far less than either of those distances; how do

1058 you come to put it there—that cross-mark?—A. That is about the distance they were; about three-quarters of a mile from this ridge.

Q. That not being three-quarters of a mile, where would you put their position?—A. *There* is about where the battery was. [The witness measures the map and marks the point indicated thus: $+^{2}$.]

Q. How did the forces of the enemy coming from the direction of Manassas or Bristoe appear; how were they formed; in column, or line of battle, or how?—A. They were in column.

Q. How far off?—A. They were about *here*. [Witness indicates a point on a line with "SS" in the word "Manassas," on the Manassas Gap Railroad.]

Q. On the railroad?—A. Coming up this road running parallel to the railroad.

Q. From the position where you were, did you see any house in the direction of those troops?—A. Of course we could see the whole surrounding country.

Q. Did you see any house in the direction of those troops, between you and those troops, or nearly between you and those troops?—A. There were several houses; yes.

Q. Were those troops near any house that you could see?—A. They were near the Carraco house.

Q. Very near?—A. Perhaps a little beyond.

Q. Did not you see any troops in the direction of the place marked "Lewis-Leachman house," on that day?—A. Yes; there were troops there, too.

Q. How were they disposed?—A. I could not say.

Q. Are you certain that no shots were fired from that direction at the men about in the neighborhood of the Lewis-Leachman house? [The position indicated being $+^{2}$.]—A. No, I am not certain; though I believe that there were.

Q. Are you not certain that most of the shots were fired in that direction?—A. I am unable to answer that, for this reason: at the time that battery was put in there [$+^{2}$], firing in this direction upon the Manassas Gap Railroad, General Stuart requested that I should go here and report the fact to General Jackson, which I did; I went off *there*, and was gone at least three-quarters of an hour or an hour. [Witness indicates a direction towards the Independent line of the Manassas Gap Railroad.] The firing commenced in the direction of the Manassas Gap Railroad.

Q. How many shots?—A. I do not know.

Q. Much firing?—A. Yes; a good deal.

Q. Fifty shots?—A. I could not say whether there were one or fifty, because when the firing commenced, as I tell you, and that battery came in position, firing in this direction—I know there were troops off here—[towards the Lewis-Leachman house] some shots may have been directed there in that direction [the Leachman house], and I went away to report to General Jackson.

1059 Q. Are you positive that there were thirteen or fourteen shots in this direction, towards Carraco's?—A. I cannot say.

Q. Are you positive that there were two shots?—A. Yes; I am positive that there were two shots.

Q. Three?—A. Yes, there were three.

Q. Were there five?—A. I cannot tell; there may have been a hundred; I tell you as soon as that battery was put in position and commenced firing I went across *here*. There may have been a hundred

shots fired in that direction. I cannot say whether there was one or a hundred. I went off *here*, and there was firing over here at the time. [Witness indicates Stony Ridge.] Jackson had his batteries stationed along here.

Q. Was there not firing due south from $+^2$, in the direction of Langley's Mill?—A. That I cannot answer. The object of putting that battery in that position was, we saw troops coming from this direction, and it was put there for the purpose of firing in that direction [Manassas Gap road].

Q. Have you been informed during the last month of the position of the column of troops commanded by General Porter, with reference to this map, on the morning of the 29th?—A. I have not; I do not know whether this was General Porter's column, or whose column it was.

Q. Has anybody informed you within the last two weeks that there was a column of Union troops in the neighborhood of the Manassas Gap Railroad about that time?—A. I did not want any information; I knew it myself.

Q. Were you informed by anybody as to that?—A. Colonel Blackford, who was also a member of General Stuart's staff, and who was summoned before this Board sitting at Governor's Island. He came to Baltimore and stopped at my place of business; he was in the engineer department; and he and I sat down and had a talk about it. I wanted him to go up to my house so we could refresh our memories of that day. He said he had to go on to New York, and we sat down in the store and talked the matter over between ourselves.

Q. Did he point out the position of any Union troops?—A. We did not have any map; we only spoke of the position of the troops.

Q. Did you see that column of troops formed in line of battle?—A. I did not.

Q. How did they appear to you; to be on top of a hill, or in a depression, or in woods, or by woods, or in an open field?—A. The position we occupied was a commanding one, of course. They were in a depressed situation from the position we occupied. We were on this hill and they were *here*. [Witness indicates.]

Q. In column, marching along the Manassas Gap Railroad?—A. Yes.

Q. Did you see the Manassas Gap Railroad right in their vicinity?—A. The road they were marching on was parallel to the Manassas Gap Railroad.

Q. When you came back to that position did you see any Fed-
1060 eral troops anywhere?—A. Yes. There were Federal troops off here. [Indicating the lines of the regiments.]

Q. When you came back did you see Longstreet's command?—A. I saw Longstreet's command on my way back from General Stuart; they came and formed in here. [Pageland lane.]

Q. Did you remain in that position all day?—A. We were there most all day. Do you mean me individually?

Q. Yes.—A. No. I was backward and forward several times during the day. I went with messages from Stuart to Lee and Longstreet and to Jackson.

Q. Then, during that whole day, you were in the vicinity of Longstreet's troops and knew of their position?—A. Yes. We were on his right.

Q. Are you positive that Longstreet's troops did not change their position at all during that day from the position in which they formed?—A. I don't know anything about the disposition he made of his troops

Q. Did not you see them after they had formed?—A. I did.

Q. At four o'clock where were they?—A. All I know is where General Hood's command was. I was in the rear of Hood's command—on the rear of Longstreet's extreme right. [The map from which the witness testifies is marked the "Major White map."] Hood's brigade was formed just on a ridge here [marked in ink W. 3] in the woods; he moved across the Warrenton turnpike to the north.

Q. Do you know who came next to Hood in the line of battle?—A. No, sir.

Q. Southward?—A. General Hood was on Longstreet's right.

Q. How did the troops come down and take position in marching down from Gainesville?—A. That I don't know. I was not present; I had no connection with the infantry at all except to bear messages from Stuart.

Q. Then the extreme right of Hood overtook Longstreet about in the spot marked "W. 4"?—A. That is my recollection of it.

Q. You say you were on a hill that commanded views of the country in front of you?—A. We had a battery off here [W. 5]; that is, there was a park of artillery in position and Longstreet's command was about that way [south].

Q. Were there any artillery in front of the position called "W. 5"?—A. Right there we had 19 or 20 pieces of artillery.

Q. Where "W. 5" is?—A. Yes; between Jackson's line and Longstreet's line.

Q. Are you as positive about the position of the guns marked "W. 5" as you are about the position of Hood "W. 3"?—A. Right here was where Hood was [witness indicates]; beyond the piece of woods there was a little branch running down; over on a hill was a battery of the Union troops.

1061 By the RECORDER:

Q. Do you know what these red lines stand for?—A. No, sir; I do not.

Q. These red lines are contour lines marking the heights, and these numbers, 200 and 210, and so forth, mark the elevations.—A. Hood was here [W. 3]; then there was a small branch.

Q. Do you know the marks which indicate branches?—A. No, sir.

Mr. MALTBY. They are the black marks.

A. Well, that is the branch [Young's Branch]. My recollection is there was a battery or several batteries of the Federal forces right there.

Q. At Britt's?—A. Wait a moment; it may be that piece of woods [between Britt's and Cunliffe's]. There is where they were—in there [about south of the word "Meadowville," under Cunliffe's]. There was a hill—I don't know how you mark it here—there was a hill, a very nice position for artillery, where there were several batteries that were firing off here [at W. 5] in that direction; with Longstreet's command right in here [W. 3].

Q. Did Longstreet's line curve from the position of the artillery [W. 5]?—A. I cannot answer that question. I had no connection with Longstreet's command; it was only observations in passing with messages from Stuart to Lee or Jackson.

Q. Where was Lee's position, headquarters, where he could be heard from, in reference to Longstreet's line, in front or behind it?—A. It was behind it.

Q. Can you locate on the map where General Lee's headquarters were? Describe as near as possible what his headquarters were. Were they a

house?—A. No; the times I reported to him he was in the field; he would move sometimes to one position, sometimes to another.

Q. Do you know where his general headquarters were that day?—A. No, sir.

Q. Were they to the right or left of the pike?—A. I cannot answer that question.

Q. How far behind Longstreet's front line was General Lee?—A. I found General Lee at one time just on a hill, just behind General Hood, when I went with a message to him, just behind General Hood's command; he was there with a glass looking off in the direction where this battery was. [Southeasterly towards Britt's.]

Q. Was he in an orchard at the time?—A. I don't know whether there was an orchard there at this point or not. I think there were a few scattering trees—whether it was an orchard or trees that had grown up there, I could not tell, but I recollect there were several trees there.

Q. Do you know Col. Charles Marshall, of General Lee's staff?—A. I do.

Q. Was he there?—A. I cannot call to mind that he was present at the time.

Q. Did yon see him during the day?—A. I did; several times.

Q. Was he in a stationary position, dismounted, or riding
1062 about?—A. Riding about. Whenever I saw him he was mounted. I saw him several times during the day, at different parts of the field.

Q. Do you know whether General Lee had any permanent headquarters?—A. I do not; I did not find him at any particular locality.

Q. Do you know that he and his aides were all the day in the rear of Hood's command?—A. I do not. I only found him there once, then he was just in the rear of Hood's command in a high position; and just in the rear of him was a piece of old fields, grown up with broom-sage, and a good deal of undergrowth and locust trees; looked as if at one time there had been an old residence there—dilapidated, run down, destroyed.

Q. Is it customary for the commanding general to have his headquarters in advance of his line of battle?—A. No, sir.

Q. Then you do not place his headquarters at any time that day as being in advance?—A. Of course, I do not.

Q. Then, if his actual headquarters were here—— A. [Interrupting.] I never said so.

Q. If his actual headquarters were about in the position marked P, would the position of Hood be in the position you have assigned it or in advance of the letter P, that being on the edge of a hill, as you see by the map, Cunliffe's being in a depression—where would you put the line of General Hood?—A. General Hood's line was just here. [Witness indicates.]

Q. Suppose Lee's headquarters were where the letter P is, where would the line of General Hood be on this map?—A. I never said that General Lee's headquarters were there [at the point marked P].

Q. Where were you when you heard musketry firing on your left, on Jackson's front, on the 29th?—A. I cannot call to mind.

Q. How long after you came back from General Jackson—you put that at twelve?—A. No, sir; it was later than that.

Q. What time do you put it that you came back from General Jackson after being sent over by General Stuart?—A. Half past two or three o'clock.

Q. Do you know of any action that occurred along the Warrenton pike; infantry?—A. I heard firing.

Q. What time was that?—A. In the evening.

Q. About what time?—A. General Jackson's command was engaged all the time.

Q. Was Hood's command engaged at all?—A. That evening they were.

Q. What time that evening?—A. I suppose about three o'clock in the evening they were engaged; two and a half to three o'clock.

Q. Were they engaged vigorously?—A. Quite a severe fight.

Q. Describe the action, so far as you observed it.—A. I was not present. I didn't see it. I heard the firing; it lasted, I suppose, half to three-quarters of an hour.

1063 Q. Was it very vigorous?—A. It was a very sharp fight.

Q. Was that the only occasion in which Hood's command was engaged that day, to your knowledge?—A. To my knowledge that is the only one until next morning.

Q. You say it was three o'clock?—A. Between two and three o'clock. It may have been after three. It was after he had got in position.

Q. How long after he got in position?—A. He got in position, I suppose, about twelve or one o'clock. This engagement took place about two and a half, or maybe three or three and a half.

Q. Was it as late as five?—A. I can't recollect. I don't think it was.

Q. What is your recollection about the time that that engagement took place upon the Warrenton turnpike by Hood's troops?—A. I was away on the right. Of course there was fighting on the line. I don't know what troops were engaged, but I know that Hood's troops had a fight there that evening. I don't know whether it was three, or three and a half; it may have been five o'clock. I know they had a sharp fight there, and I heard it.

Q. What time did you hear the noise?—A. I say about two and a half or three o'clock, as well as my recollection serves me.

Q. Does your recollection serve you as well about the time of that engagement as it does about the time of your arrival at this point marked $+^2$?—A. That engagement was after we arrived here.

Q. Does your memory serve you as well as to the time; can you fix it more precisely?—A. I had no connection with Hood's command.

Q. You heard the sound in the day?—A. I did.

Q. Do you fix that time with more or less precision; and, if so, why, than the time you arrived at the point marked $+^2$?—A. Hood's command had not formed at the time we left here; he formed afterwards.

Q. Your idea of hours, is it more exact as to the one hour that you have mentioned than any other hour during the day, or less?—A. I don't understand the question.

Q. Does your memory serve you equally well as to all the hours stated by you?—A. The hours that I spoke of at the time I was connected with our command, of course, are more clear in my mind.

Q. Than the time when you heard the sound of vigorous battle near you?—A. The cavalry were around on the right. Hood was right in there [W^3]; and three and a half or three o'clock, to the best of my recollection, is the time I heard the sharp fighting in Hood's front. From the position he occupied I supposed it was his front, because we were just to his right.

Q. Is your recollection as to that any better or any worse than your recollection of the hours at which you arrived at $+^2$?—A. I have stated my recollection of it.

1064 Q. Is it any better or any worse?—A. I have stated it. I have given you the time at which my memory serves me that fighting took place.

Q. Is your memory quite as distinct about that as any other hour stated by you?—A. That is not a proper question.

Q. Yes, it is, and you will answer it, and the Board will rule it out if they think it proper.—A. My recollection is clearer, of course, in reference to my duties at our immediate headquarters than the other commands, because it is clearer to my mind.

Q. If it were proven that no Union troops were upon the Manassas Gap Railroad in the position you have marked, and that the position which they actually did occupy—the corps referred to in that neighborhood—was invisible from the position that you occupied—— A. I never said it was a corps; I said it was a column of troops.

Q. The corps referred in that neighborhood, would you or would you not say that those troops were in the neighborhood of Leachman's?—A. I saw troops in both directions.

Q. Might they not have been on the Alexandria and Washington road, about the junction of Lewis' lane No. 1 with that road?—A. No, sir; there were troops off there; we could not see them from the position we occupied. There were troops over here both in the direction of the Lewis-Leachman house and off in the direction of the Manassas Gap Railroad.

Q. How much of the column did you see there on the Manassas Gap Railroad?—A. I saw a good many troops there. I don't know how many there were.

Q. A regiment?—A. I suppose there were more; two.

Q. Two regiments?—A. Yes; perhaps more than two regiments.

Q. How much of the line did you see?—A. I saw the column; they were moving in column.

Q. How much of the column did you see?—A. From the head of the column I cannot say whether half a mile, or a mile, or three miles.

Q. Did you see a quarter of a mile of them?—A. I don't know that I saw a quarter of a mile of them.

Q. Did you see along the line or column?—A. I did.

Q. How many regiments should you judge you saw?—A. I don't know how many regiments. When the head of that column appeared there, this battery was put in position and opened on them. I went by direction of Stuart to Jackson to report to him.

Q. Did you see them at all in flank?—A. I did not.

Q. Were you early that day, before those guns were fired, or about the time these guns were fired, from the position of $+^{2}-$ were you at all in the vicinity of Vessel's?—A. I don't recollect.

Q. Were you in the vicinity or to the rear of Deat's and south of Vessel's?—A. When?

1065 Q. About that time, prior to the opening of the cannon, and at the time of their opening?—A. No, sir.

Q. Was this column which you saw coming down a declivity or marching upon a plain?—A. They were marching on a plain, as well as my memory serves me.

Q. Did you know that General Stuart or any of his command had an engagement in the neighborhood of Gainesville on the morning of the 29th?—A. I do not, because on that morning I rode across the country from Sudley Church in the direction of Thoroughfare Gap; and Gainesville was to our left. Some portions of his command may have been thrown off there and had a slight engagement without my knowledge.

Q. How long did it take Longstreet to form after he passed through Gainesville?—A. I do not know. I had no connection with his command.

By the RECORDER:

Q. Assuming Hood's division to be in the place you have indicated by W^3, and suppose there had been a battery placed on this rise of ground, marked C, would that have fulfilled what you understood was the position of a battery firing off in the direction of "W^5"?—A. Yes. Just beyond a small branch there was a hill, a very fine position for artillery, and it was firing off in the direction of "W^5." The highest ground of that hill is where that battery was placed, or rather a park of artillery; 19 or 20 of our guns were in that position.

Q. Suppose that the column of troops that you saw on that morning, or on the noon of Friday, August 29, had been coming up the dirt road from Manassas Junction to Gainesville, and was in the neighborhood of Dawkins' Run, would that have been the position of the column that you saw, according to the map?

(Objected to as leading.)

A. The troops that we saw approaching came more from the direction of Bristoe than from Manassas.

Q. Therefore what road indicated on this map best fulfills the direction from which you saw those troops coming?

(Objected to as leading.)

A. They were approaching more in the direction from Bristoe than from Manassas.

Q. Therefore what road best of the roads you see on this map shows the direction from which you saw those troops coming [map explained to the witness]? Now where were the Federal troops?—A. I remarked a while ago that the column that was advancing advanced more from the direction of Bristoe than Manassas.

Q. *Here* is Bristoe and *there* is Manassas. Now where do you put it, what direction? Make a line indicating the direction.—A. They must have come in *here* or in *here*.

Q. Then you are not positive that you saw them on the Manassas Gap Railroad?—A. I never said I saw the Manassas Gap Railroad. I said I saw them on the road running parallel with the Manassas Gap Railroad. They were not marching on the railroad. They were marching on a road that I supposed, from the position I occupied, was a line parallel with the Manassas Gap Railroad; they may have been on this road [from Gainesville to Stuart's Hill] and took position there [at $+^2$].

1066 From that position we saw the column coming up, but they were not on the railroad.

Q. How far from the railroad do you judge they went—you saw the railroad from that position?—A. As I said from the beginning I suppose that they were—well, I don't know—I would not say, because my opinion is not clear.

Q. Did you see the railroad in conjunction with seeing them, or at the same time in connection with seeing them?—A. I could not say. I was not looking for railroads. I was looking for troops. I don't recollect now whether I saw the railroad or not, because my attention was directed to more important matters.

Q. Would you swear that those troops, Bristoe being *here*, and Manassas *there*, that those troops were not on this road to Milford?—A. No; they were not in that direction at all. They were off here [witness indicates in the direction of the Manassas and Gainesville dirt road].

Q. Had you been to Bristoe that day?—A. No, sir; we had been there the day before.

Q. How do you know where Bristoe was?—A. Because I have been there a thousand times since.

Q. Could you see it from that position?—A. I don't know that you could see the station, but I knew the general direction, and had been all over that country time and again.

Q. Did you see any of the shot fired fall near that column?—A. Yes, sir.

Q. What did the column do?—A. The column seemed to retire.

Q. Did you see them retire?—A. Yes; I saw them give back.

Q. How did they retire?—A. You know how troops retire. They gave back into a piece of woods; and just at that time I went off with a message, as I stated before—went off with a message to General Jackson from General Stuart.

Q. Did anybody mention a piece of woods to you in connection with those troops within the last month?—A. Not if my memory serves me.

Q. Were you reminded of a piece of woods by any marks on the map?—A. No, sir; because my memory serves me clearly that it was just in a piece of woods when the head of the column showed itself, and they retired back into the woods, and we fired our artillery into this piece of woods.

Q. Did you see a smaller column march from this main column in advance and deploy?—A. I don't recollect. When we took position there was a column advancing more in the direction of Bristoe than from Manassas.

By the RECORDER:

Q. Looking at the map where you made a mark somewhat south and east of Carraco's on the Manassas Gap Railroad, if that country was all open at that time, would that position fulfill the position you have just indicated as where those troops were that you saw that fell immediately back into the woods upon being fired upon?—A. My recollection is that
1067 the scale of this map is about the distance they showed themselves in our front. I suppose that would indicate about three-quarters of a mile, or something in that neighborhood—half or three-quarters of a mile. That is about the distance that they were in our front when we discovered them and opened upon them. At the same time we saw troops off in this direction [the Lewis-Leachman house]; just about here there was a narrow range of wooded hills.

By Mr. MALTBY:

Q. You say that the artillery were stationed on the right of Jackson at the highest point on the ridge. Now, did Longstreet's line bend back from the line of Jackson, or did they make an angle more nearly approaching right angles?—A. I had nothing to do with Longstreet's position.

Q. But you saw it?—A. I passed in his rear several times.

Q. Take a pencil and mark Longstreet's line.—A. There was an angle formed between Jackson and Longstreet's line; Jackson's line ran along here. [Witness indicates.]

Q. Draw it in pencil. There is the Independent Line of the Manassas Gap Railroad. [Indicated to the witness.]—A. Jackson's artillery was posted on this stony ridge.

Q. Draw a line where the nineteen or twenty guns were posted.—A. I had no connection with Longstreet's command or Jackson's. I passed

in the rear of both lines several times with messages. I did not inspect their lines. I just speak from general recollection of their lines.

Q. Then you do not recollect precisely where any one line was?—A. I do; yes. I have indicated there is Jackson's line; his artillery was posted on this range of hills; General Longstreet formed here. [Witness indicates the different positions.] Their lines did not join; there was an angle there, an opening, and there is where the battery of artillery was.

Q. Draw Jackson's line and the cannon of Longstreet.—A. I have indicated it. [Witness indicates the line of the Independent Line of the Manassas Gap Railroad.] His line did not go down that far [indicating Sudley Church]; it went to about there.

Q. Where do you run Jackson's line?—A. Jackson's line ran about in this direction. [Marked with a pencil.] That is about the direction of Jackson's line.

The line indicated by the witness by means of a pencil is followed in ink by the Recorder.

Q. Where were these eighteen or twenty guns of Jackson's?—A. That did not have reference to Jackson's command; Jackson's artillery was posted on this range of hills back of his line of battle. This park of artillery is where W 5 is and W 6.

Q. You still say that Hood occupied that position, and that his right was where + and + + are?—A. There is where Hood was; right there.

The examination of this witness was here closed.

Rev. JOHN LANDSTREET, called by the Recorder and examined in the city of Baltimore, October 22, 1878 (present, the Recorder and Mr. Maltby, of counsel for the petitioner), being duly sworn, testified as follows:

1068 Direct examination:

Question. State your residence and occupation.—Answer. Minister of the Gospel in the Southern Methodist Church; I reside at Riesterstown, Baltimore County, Maryland.

Q. What position did you hold in the Confederate Army of Northern Virginia on the 29th of August, 1862?—A. I was chaplain of the First Virginia Cavalry during the entire war. Before I was commissioned I was with General Stuart. I received my commission while with him. I had a little more liberty than some of the others had, in view of my position, preaching to the different commands, and would often absent myself with less formality than some of the rest would. I was with him in all his important engagements, or, if I was not with him, he would generally send for me if he knew where I was.

Q. Where were you on the morning of August 29, 1862?—A. I was between Sudley Springs and Aldie, about midway in the mountain.

Q. Did you join General Stuart that day?—A. I joined him for the first time for eight months, after our Catlett's Station raid. I think I reached Sudley between eight and nine o'clock in the morning.

Q. Was General Stuart there?—A. Yes, sir.

Q. Do you recollect any circumstance transpiring after you arrived there?—A. No, sir. Just before we arrived there was a little confusion or kind of stampede among the baggage-train. I don't know that I noticed any of our cavalry there unless it was those connected with the commissary and quartermaster's department. But there was a little skirmish there about that time which attracted my attention.

Q. Did you see Captain Pelham any time that day?—A. Yes; I saw him. I was very intimate with him. But where I saw him I cannot tell. I have a journal in which I noted everything. I kept it at the request of General Stuart, and partly for my own gratification, but especially at his request.

Q. Do you know at what time you left Sudley?—A. No, sir; I recollect that the next place where I was was called Cole's. It was an elevated position, rather in the angle between Gainesville and Bristoe; Bristoe being much farther off. [Witness looks at the map.] It was Hampton Cole's.

Q. At what time in the day were you at Hampton Cole's?—A. I did not have a watch, but I think it was somewhere towards ten o'clock in the day.

Q. What did you do or see there which has impressed itself upon your attention?—A. There was considerable dust in this direction [witness indicates], indicating a body of troops; there was considerable down in this direction somewhere. At any rate, General Stuart ordered some of the Fifth Cavalry to go and cut brush and drag it along the road.

Q. [By Mr. MALTBY.] Did you hear the order?—A. Yes; to drag the brush along the Gainesville road, so as to serve as a feint and to convey the impression that there was a force coming down the Gainesville road. It was given, I distinctly recollect, to a member of the Fifth Virginia Cavalry.

Q. Who was the colonel of that regiment?—A. T. L. Rosser. We frequently after that conversed about it.

1069 Q. What was done after that, while you were in the neighborhood of Hampton Cole's?—A. There was some firing from this position [+2], in the direction of this approaching force; and from my recollection of it the force was a considerable distance down. If 3 inches indicate a mile here, and if it was a life and death case, I should say that it was inside of a mile that they were off.

Q. You should say it was a distance of about a mile?—A. I should say it was inside of a mile. It was not beyond a mile, certainly. [Witness indicates from Hampton Cole's.] There were several shots fired from this point in the direction down there.

Q. In what direction?—A. That depends entirely upon where the man was standing at the time, and what he was looking at. I did not charge my mind much with this Manassas Gap Railroad, though I knew it very well. But I would not say whether it was here or there [whether right or left]. It was pretty much in line with this railroad. [Manassas Gap Railroad.]

Q. What became of this column of troops upon those shots being fired?—A. I did not see them.

Q. They disappeared from your sight?—A. Yes, sir.

Q. Did they remain in the position they were in when they were fired upon?—A. No, sir. When my attention was directed to them they were where I could see the column, or a considerable portion of it; and they were marching in good order, close column.

Q. Do you recollect how many shots were fired at them?—A. I do not; but I am positive I didn't hear half a dozen; I know I did not.

Q. How long did you remain in that position in the neighborhood of Hampton Cole's that day?—A. I was sent off after that to hunt up the First Virginia Cavalry, not very far from there at that time; and I paid very little attention, indeed, from that time. When Longstreet came and formed there, General Jackson being in position, I came out from

the command, and I was not in any of the fight at all except in the cavalry movements—skirmishing.

Q. Where did General Longstreet form his command?—A. It seems to me I struck a portion of Hood's command on General Longstreet's left, before I got anywhere in the direction of Longstreet's right. They seemed to come in a good ways in the direction of General Longstreet's left, if they were not immediately on his flank.

Q. About where would you put them; north of the pike, across the pike, or south of the pike?—A. Which?

Q. Hood's division of that command.—A. From my recollection, there was a portion of Longstreet's command that crossed the Manassas Gap Railroad [the witness marks a point with a pen]; crossed it, I am sure, some distance, but how far I don't know. I do not think it was far. It extended, I think, up in this way. Hood's was in front of it; part of it in the body of the woods. My impression is that Hood came in a little in advance of Longstreet's left. I am certain I came to Hood before I came to Longstreet's force in position [marked "Longstreet" and "Hood"].

1070 Q. What time of day was that that they were all in position?—A. When I say that, I say so simply from my recollection, and guessing at the time.

Mr. MALTBY. Then I object if he guesses.

The WITNESS. What I guess is this: every man has a way of forming an idea of an hour of the day based upon his experience. It is my recollection that it was somewhere between two and three o'clock.

Q. Do you know whether or not either Hood or the remainder of Longstreet's command were in advance to the east of Page Land lane at any time that day?—A. I do not.

Q. Was your position such that you could see the location of Hood and Longstreet during the afternoon?—A. O, yes; I could go where I pleased.

Q. How long did this action of that day continue?—A. The firing to my recollection continued up to about dark. It was near dusk. At times it was heavier than at others; and at times severer than I ever heard it in any engagement.

Q. What were your opportunities during that day of knowing the fact, provided General Hood had advanced east of Page Land lane? [Points of compass upon the map explained to the witness.]—A. My answer is, that if I had a desire to know it, I could have known it very easily; but I didn't think about it at all. It was not in my mind. I was well acquainted with Hood and his command, and that made the impression upon me in coming to this point. I came from the direction where Jackson's command was, and passed this heavy battery at the time, though I think there were a few more guns there than I have heard stated to-day.

Q. How late in the day do you recollect seeing General Hood's division?—A. Between three and four o'clock.

Q. Where was it then?—A. Where I have indicated on the map.

Q. Relative to the command that you heard given by General Stuart to the member of the Fifth Virginia Cavalry to drag brush, what do you know about whether that order was obeyed or not?—A. After hearing this order given, and being very much interested in the approach of this column below there, I kept a lookout, and it was not long—I am sure not more than 40 or 50 minutes—before the column of dust on the Gainesville road appeared.

Q. You saw the column of dust arising?—A. I saw a cloud of dust.
Q. Arising from this dragging of brush?—A. Yes.

Cross-examination by Mr. MALTBY:

Q. Where was your home from which you started on the morning of the 29th?—A. I did not start from my home on the morning of the 29th.
Q. From whose house did you start?—A. I started from my home on the 28th, in the evening; and on my way down, a few miles from Sudley, I met a gentleman who knew me, and he proposed that I should go to his home and pass the night. He was a soldier. I went with him; it was some way from the public road and between Sudley and Aldie; in that direction.
1071 Q. Do you know his name?—A. I think his name was Harley.
Q. How far were you from Aldie?—A. About midway between Sudley and Aldie.
Q. How far is it from Aldie to Sudley?—A. I have never been in this house since, nor was I there before.
Q. How far is it from Aldie to Sudley?—A. I suppose about twelve miles; may be more, may be less.
Q. Did you have breakfast by daylight?—A. We got our breakfast by daylight.
Q. Were you off by daylight?—A. We were off in daylight, but it was not just as day broke.
Q. Was the sun up?—A. No, sir.
Q. Did you move rapidly?—A. We did not move very rapidly; we did not hurt ourselves nor our horses; we came on a soldier's dog-trot.
Q. Did you know where you were going to?—A. Yes.
Q. You came direct?—A. Came directly to Sudley.
Q. Without any halt?—A. With one exception. There was a scattering of a party of citizens and other folks who were not accustomed to such things, and we rode to it and found that the commissary's stores or quartermaster's stores had been threatened and there had been a stampede among them.
Q. Was that the stampede among the ambulance wagons to which you referred?—A. I knew nothing about that. This was a stampede on the part of these wagons. I paid no more attention to it. I was anxious to be at my post that morning. I did not stay long.
Q. How soon after leaving did you arrive at Sudley?—A. I don't think it was over thirty minutes.
Q. After leaving your breakfast?—A. After I left my breakfast, I suppose it was two hours.
Q. In going six miles?—A. Two hours at least.
Q. In going six miles?—A. That was about the time it took us.
Q. Riding directly?—A. I said I did not stop on the road, didn't I?
Q. Yes.—A. Well, I corrected that. I recollect stopping at one gentleman's house on some business for this man who was with me.
Q. How long did you stop?—A. May be thirty minutes, or forty minutes—a very short time.
Q. It took you that time to go the six miles?—A. With that single exception.
Q. Did you trot or walk?—A. We walked our horses unless we were in a hurry. Four miles in an hour is good traveling for soldiers.
Q. Did you accompany Stuart when he went across the country from Sudley to meet General Longstreet and General Lee?—A. No, sir.
Q. Who arrived first at Hampton Cole's, you or General Stu-
1072 art?—A. He did. He was there when I got there.

Q. Do you know Colonel Blackford?—A. I know him well.

Q. Did you see Colonel Blackford there when you got there?—A. I don't recollect.

Q. Do you know whether Colonel Blackford was sent for by General Stuart to reconnoiter?—A. No, sir; I do not.

Q. Did Colonel Blackford come after you were there?—A. I cannot say whether he came after I was there or before.

Q. Will you describe the position on that map, about where you saw the column of dust arising after General Stuart gave the order?—A. I think it was midway between this point and that.

Q. About midway between Hampton Cole's and Gainesville, along on the line of the Manassas Gap Railroad?—A. Yes. It may have been further. There is some wood-land beyond that.

Q. Were you on this commanding ridge where the guns were stationed, of which you have spoken?—A. Yes, right there at Hampton Cole's.

Q. Are you certain it was at Hampton Cole's, and not at Carraco's?—A. I am certain it was at Hampton Cole's.

Q. Can you see southward from Hampton Cole's?—A. I have no recollection of seeing much in that direction. I recollect seeing some.

Q. Did you see any force south of Hampton Cole's?—A. I did not.

Q. Or southwest of Hampton Cole's?—A. I did not.

Q. Or rather more towards Gainesville than south?—A. Any of our forces?

Q. Any troops at all.—No, sir; I have no recollection.

Q. Did you arrive at Hampton Cole's before this battery was stationed upon this ridge?—A. Yes; the battery was put in position after I got there. This column from this direction made its appearance after I got there.

Q. What battery was placed there?—A. I don't know.

Q. Were they guns belonging to Stuart's command?—A. I think they were; I am not certain of that.

Q. How many guns?—A. I don't recollect the number.

Q. You say in line with the Manassas Gap Railroad. Do you mean in line with the road by which you came, or line with the Manassas Gap Railroad laid out in front of you, as it is on this map?—A. It was pretty much in line with the Manassas Gap Railroad, as it is laid down on the map.

Q. From your station at Hampton Cole's, in which direction was Longstreet's command when you first saw it, without reference to the map?—A. I am sorry you brought me a map with anything on it now, because my impression is that Longstreet's line commenced on the other side of the Gainesville road and crossed it, but did not cross it
1073 far, and came up and passed the Warrenton turnpike; and that Hood's command was extended beyond his left.

Q. Didn't you understand Hood's command to have been a part of Longstreet's command?—A. I mean Hood's division.

Q. In which direction, as you stood at Hampton Cole's facing the enemy, was Longstreet's command from you, with reference to your own person—to the left, right, front, or rear?—A. Looking down in the direction from which the enemy were coming, a portion of it was in my rear and a portion of it was not.

Q. At the time you arrived there at Hampton Cole's?—A. No, sir. They did not get in this position at the time I arrived at Hampton Cole's. I arrived at Hampton Cole's about ten or eleven in the morning.

Q. Where were the guns stationed in reference to Hampton Cole's?—A. The guns were pointed down a little to the left of the railroad.

Q. How near were you to the guns?—A. Right up by them.

Q. How much of that column did you see?—A. I could not say how many regiments there were. The column indicated that it was the head of a considerable body of men.

Q. What was that indication?—A. They were marching in close column.

Q. Would not a regiment march in close column?—A. Might not in as close column as that, and in good order. My judgment in the matter was that it was the advance of a large army.

Q. Did you see a quarter of a mile of that column?—A. No, sir.

Q. An eighth of a mile?—A. That is somewhere near it.

Q. Was it marching upon a plain?—A. I cannot tell you that. It did not appear to me as if they were coming up a hill, nor as if they were coming down a hill.

Q. As if they were marching upon a plain?—A. It looked pretty much as if they were on a level.

Q. Can you state whether any bushes were to their right or left, or trees?—A. No, I could not. My impression is that the country was pretty well open left and right of where I first saw them.

Q. Did you see them in flank at all?—A. No, sir.

Q. I don't know whether it is a military expression or not.—A. Do you mean did I see the rear of the enemy?

Q. No, sir. I mean the side of the column as it advanced.—A. No, sir; it was the shortest space of time before the firing commenced here at Hampton Cole's before I saw them no more.

Q. Did you see them deploy in line of battle?—A. No, sir.

Q. Did you see any skirmishers thrown forward?—A. No, sir; not one.

Q. Could you have seen skirmishers thrown from the advance of that column?—A. Yes.

1074 Q. Could you have seen any deployment from the right of that column?—A. Yes; because I used a powerful field-glass all the time. I could have seen it as plain as I see you.

Q. Was this column to your right or left?—A. From the position I was in, it was almost directly in my front. I think if I had advanced in a straight line, I would have come up face to face with them. I was a little to the right of Hampton Cole's and looking right straight down.

Q. Had you been, previous to that, at Charles Randall's, or at Vessel's, or off in this direction, south?—A. No, sir.

Q. Were those cannon at all directed in the direction of Britt's and the Leachman house?—A. Not while I was there.

Q. Did you see troops in the neighborhood of the Leachman house?—A. I knew there were troops there, but how I knew it I am not now prepared to say.

Q. Did you see troops near the old Warrenton, Alexandria and Washington road?—A. I don't recollect that.

Q. What became of those troops which you saw disappear?—A. I cannot tell. I have seen that thing time and again during the war.

Q. How did they disappear? Did they march out of sight in the rear, or did they retire in the bushes?—A. If you will let me use an illustration: It was a very common thing for a column of cavalry to advance, and one shot into a column of cavalry would make them disappear in the woods, and that was the end of it. I never saw a column that got out of sight quicker than this column did.

Q. How do you fix it as being eleven o'clock in the day?—A. During the war, when I did not carry my watch, I was accustomed to average the time—how long it took to go to this place, and how long it took to go to that place, and I often came very close to it.

Q. Did you average the time in this instance?—A. I speak now simply from my recollection of what my impression was at the time, when the time was that these things occurred. I have no doubt in the world that my impression was taken exactly from my diary as I wrote it; the times of the day were specified in that, where I stated the times of the day.

Q. Why can you not tell where you were between the time you left Sudley Springs and the time you saw this enemy, if you are accustomed to average times that it took you to go from place to place?—A. I have not been asked the question where I was.

Q. You said you did not recollect, in your direct examination, anything from the time you were at Sudley Springs until you arrived there?—A. No, sir; I did not intend to say that. I intended to say in regard to the events that transpired in connection with the 29th, I had not charged my mind with anything after I left Sudley, until I got to Hampton Cole's.

1075 Q. Then, if you do recollect what you did between the time that this artillery firing occurred at Sudley Springs and the time that you arrived at Hampton Cole's, will you state what it was?—A. I have met a number of friends and acquaintances who had come down from Loudoun to see their children, and who wanted to question me about them, as I was more apt to know than anybody else.

Q. Where was that?—A. That was in the neighborhood of Sudley. Most of them were my parishioners. My time was taken up pretty much during that period of time in talking to those men.

Q. How long did you talk with those men?—A. I don't know.

Q. You did not take any note of that?—A. No, sir.

Q. When did you leave them?—A. I don't know precisely the hour of the day that I left them.

Q. Where did you go when you left them?—A. I went to Hampton Cole's.

Q. Direct?—A. I don't know that I went there direct. I found myself there somewhere between ten and eleven o'clock.

Q. You have not charged your mind with the route that day?—A. No, sir.

Q. Do you know how many of your neighbors you conversed with?—A. No, sir; I know there were a great many.

Q. Did you talk with a great many?—A. I talked with a number; I cannot say how many. I may have said not more than "How do you do?" to some of them; but occasionally there was one or two who wanted to inquire about their sons, to know if they were alive.

Q. You say you arrived at Cole's about ten o'clock?—A. I should say between ten and eleven. I think it was nearer eleven than half past ten.

Q. You cannot swear positively whether it was half past ten or eleven?—A. No, sir; only that it was in the forenoon; before twelve o'clock.

Q. From your position at Hampton Cole's, after the formation of Longstreet's line, could you see them?—A. Could I see who?

Q. Could you see Longstreet's line?—A. I was not there when Longstreet's line was formed. I visited the line after it was formed.

Q. How long did you remain at Hampton Cole's?—A. I suppose I staid there until—well, it was just after the brush expedition; shortly

after that; and I went in the direction of Gainesville from there. I don't know but what I went right across to Gainesville; I think I did.

Q. How did you go?—A. I struck out on this Gainesville road that I had traveled hundreds of times towards Gainesville; pretty much along the line of the railroad.

Q. How long did you say that it was that you were at Hampton Cole's?—A. I said I was there until after twelve o'clock.

1076 Q. Were you there about an hour in all?—A. I was there more than an hour; I was there fully an hour and a half.

Q. You passed along the Manassas Gap Railroad?—A. I passed along the Gainesville turnpike.

Q. What did you see on your route in the shape of troops?—A. I met some of, I think, Longstreet's forces on the Warrenton pike.

Q. Did you see any of Longstreet's troops?—A. I have no recollection of seeing them.

Q. Were there any troops marching on that turnpike?—A. There may have been. I did not pay any attention to it.

Q. How long did you stay away in the direction of Gainesville?—A. I staid away until about three or half past three o'clock, I think.

Q. Then what did you do?—A. Then I returned to the First Regiment of Virginia Cavalry.

Q. Where was that?—A. If my recollection serves, it was between Hampton Cole's and Sudley.

Q. Was the detachment that had been sent off to drag brush there that day?—A. No, sir. That was the Fifth Virginia Cavalry, commanded by Colonel Rosser.

Q. When did you first see the place where Longstreet's line was formed after you went off towards Gainesville?—A. I saw it for the first time a little after three o'clock.

Q. Was it then formed?—A. Yes; it was then formed in good order.

Q. All along the whole line?—A. Well, I did not ride along the whole line.

Q. Where were you?—A. I could not tell you how it was along the whole line. I rode in along *here* and I passed on out *here*. I passed around on Longstreet's left, and I found Hood's division in front of Longstreet, and rather extending beyond his left. [Witness indicates near Page Land lane.]

Q. Then what did you strike?—A. I didn't know what the name of the road was. I made for Sudley neighborhood, and there I met a portion of the First Virginia.

Q. On Hood's left or Longstreet's left, did you find artillery?—A. Yes, sir.

Q. Did Hood's line extend quite up to the artillery?—A. No, sir; it did not. There was a gap.

Q. How much of a gap?—A. I don't recollect how much it was, but it was a considerable gap.

Q. Half a mile?—A. I don't know whether it was that much, but it was a considerable gap, a considerable elevation.

Q. Do you know where that artillery was in reference to the Browner or Douglass house?—A. No, sir; I know nothing about houses there.

Q. Were the batteries in advance of Hood's line?—A. Well, rather.

Q. Much?—A. No, sir; they were rather a little in advance of his left.

1077 Q. Was the distance between Hood's left and the right of the artillery as great as the gap?—A. According to my recollection, the battery was pretty nearly in the center of the gap.

Q. Did the line of the battery run in the same direction that Hood's line ran, or did Hood's line form an angle with the battery?—A. It was at an angle.

Q. Was the right of the battery much in advance of Hood's left?—A. No, sir; it was not much in advance, but still it was in advance.

Q. Was it a half-mile in advance?—A. O, no.

Q. Was it a quarter of a mile?—A. No, sir; I don't think it was that.

Q. Or an eighth?—A. I don't think it was that. It was a very short distance in advance. I would not say positively that it was in advance at all.

Q. If the actual position of the artillery on Jackson's right and on Hood's left was in the general line A A, where would the left of Hood have joined him and where was the left of Hood in reference to that?—A. Pretty much where the right of Jackson was in reference to it; they sustained pretty much about the same relation.

Q. Where was the right of Jackson?—A. Pretty much to the left, in rear of that battery, from my recollection, and about nearly the same distance that Hood's left was to the left.

Q. How far?—A. About intermediate.

Q. Did you see Jackson's right come in there?—A. No; I did not see it.

Q. Mark where it did come.—A. I cannot tell.

Q. You saw Jackson's right?—A. Yes; but my recollection is that that distance is pretty much about equal, the battery being in advance of both, between Hood's left and Jackson's right.

Q. Where was Jackson's right?—A. Jackson's right at that rate would be somewhere about here (witness indicates).

Q. Where would Hood's left be?—A. Somewhere about here (witness indicates).

Q. Is there the same distance between them?—A. To my mind they look about the same.

Q. This is a third of a mile from Hood's left to that position?—A. There is no third of a mile about it.

Q. You have not got the full distance?—A. It was just the difference between tweedledum and tweedledee. It was a very fine position for artillery, which guarded both the left of Hood and the right of Jackson.

Q. You say that Jackson was back of the left of that line of artillery as far as Hood was back of the right of the artillery?—A. That is my recollection of it.

Q. Now, then, if that was the actual line of artillery [A A], where would you put Jackson's line? Saying that the same distance
1078 intervenes between Jackson's right and the left of that artillery as between the right of that artillery and the left of Hood, where would you put Jackson's left?—A. I cannot say anything about the distance. I have no recollection exactly of where his left rested.

Q. When you went off on the Gainesville pike, did you remain on that pike until you returned to the position where you saw Hood?—A. I went very near Gainesville.

Q. Did you remain all the time upon the pike?—A. No, sir; I was intermediate.

Q. After you got to the pike what did you do?—A. I came in here, and went along a portion of Longstreet's line—left the main road.

Q. I mean when you were going back?—A. Going back from where?

Q. From this position at Hampton Cole's, and struck the pike?—A. I went on toward Gainesville.

Q. Did you remain on the pike during all of that journey backward?—A. I don't know that I did.

Q. Where did you go?—A. I was near Gainesville.

Q. What was your purpose in going?—A. Just curiosity, or maybe I went to get my dinner; I don't know.

Q. Where did you go in the neighborhood of Gainesville?—A. I don't recollect the particular house; I was at Gainesville a hundred times during the war.

Q. Did you remain in close vicinity of the pike?—A. I know I did not get far from the pike.

Q. You saw no troops marching?—A. No; I didn't say that. I say I didn't know what troops they were. I saw occasionally troops on the road.

Q. Many?—A. At times I saw quite a number.

Q. How large a force did you see on the turnpike?—A. I don't know.

Q. Did you see ten thousand?—A. I don't think I did.

Q. Did you see five thousand?—A. I don't think I did.

Q. Did you see one thousand?—A. I may have seen that; maybe more.

Q. Two thousand?—A. I cannot tell you.

Q. Did you see three thousand?—A. I cannot answer the question, because I did not charge my mind with it.

Q. Was it your impression or opinion that they were the advance or the rear of Longstreet's command?—A. It was my opinion that it was the rear, if I knew anything about it.

Q. Which was it?—A. I don't know that I ever knew.

1079 Q. Have you visited this field since the war?—A. No, sir. Do you ask me whether I have been to Sudley since the war?

Q. No; I mean this location marked by you, between Hampton Cole's and the Warrenton pike.—A. No, sir; not from that day to this.

Q. Allow me to refresh your recollection. These guns were under the command of Major Froebel?—A. I don't know; I have never asked the question.

Q. How long did you watch this cloud of dust back between Hampton Cole's and Gainesville, which occurred immediately after the sending of that order to drag brush?—A. It didn't occur until thirty minutes afterwards; I suppose I watched it four or five minutes.

Q. How long was that dust there?—A. I don't know; the dust extended down a considerable distance. I am satisfied that whenever I looked in that direction the dust was there.

Q. For how long a period?—A. I am not willing to answer the question, inasmuch as I cannot answer it with positiveness.

Q. Give me your idea.—A. I am not disposed to give you an idea of a fact when I don't know it to be a fact.

Q. Would you say that you saw that dust there for six hours?—A. I certainly would say that I did not see it for six hours.

Q. At various times during the period of six hours?—A. No, sir; I did not see it six hours, nor the half of six hours.

Q. Then you did not see it at various periods during the length of three hours?—A. I am satisfied I did not.

Q. Did you see it at various times during the period of one hour?—A. I say I saw it at various times during the period of twenty-five or thirty minutes; I know that in that space of time I was somewhat interested in it; but no further.

Q. If you will tell me how to mark this, I will mark that ride that you took, starting at Hampton Cole's. You went out towards Gaines-

ville?—A. I came out to the Warrenton road; I do not see the road there now; but it was a direct road. It was open country. You could come at an angle. I came out on the Warrenton pike, somewhere here. [Witness indicates.]

Q. Did you strike it in front or to the rear of Page Land lane?—A. I don't recollect that. I don't know Page Land lane. I may have come out on a lane; it is natural enough that I should have done it; I struck it by the direct road, I know.

Q. Did you follow the line of the railroad at all in going back there?—A. I went part on the railroad after I left Hampton Cole's.

Q. How far did you follow this railroad?—A. I don't recollect anything more than that I went part of the way on a railroad.

Q. Did you turn to the right or left after striking the railroad?—A. I don't recollect that; I recollect nothing at all about it, in regard to the items, as to my taking such a road as that.

1080 Q. Did you strike directly from the pike after striking the railroad, or was it some time afterward?—A. I don't know what time of day I struck the pike at all; I don't recollect anything at all about it; I have no recollection on the subject; I have no doubt that I made an entry about it at one time, but where it was I don't know—I only recollect where I went.

Q. When you came back and found Longstreet in position, was he in advance of the place where you struck the road going back to Gainesville, or to the rear of it?—A. That is plain enough. I think that Longstreet's position was in advance of where I struck the road when I came out to go to Gainesville.

Q. Then you think you must have struck the Warrenton, Gainesville and Centreville pike?—A. I said, as I came out my recollection was that I saw Longstreet in position in advance of where I came out on this road. I came out somewhere along here. [Witness indicates.]

Q. You must have come out on this road between the word "Warrenton" and the line which you have indicated as Longstreet's crossing the turnpike?—A. Yes, sir.

Q. On your way back to Gainesville?—A. On my way to Gainesville.

Q. Didn't you say that Longstreet was in advance of that position?—A. I say when I returned, when he was formed in line, my impression was that I had come out on the pike this side of where he was in position. [Witness indicates.] I suppose I came out and found him in position, and saw that he was in advance of where I came out on this road.

Q. No, he was to the rear.—A. Well, that is what I meant by it.

Q. Did you see any Confederate troops to your left as you were going from Hampton Cole's to the place where you struck the Warrenton and Gainesville road?—A. I don't recollect that I did. I may have seen them, but I don't recollect.

Q. Would not any considerable body of men in line of battle have made an impression upon you?—A. No, sir; would not have made a bit of impression, unless there was something in the case to particularly strike me.

Q. Then they might have been there or not?—A. Might have been there or not. I could not testify as to whether they were or not.

By the RECORDER:

Q. Do I understand you to say that when you came out here towards the pike, after leaving the neighborhood of Hampton Cole's, that you did not see any large body of troops to your left?—A. No; I did not.

I said this: I saw troops, but I did not charge my mind as to whether they were a large body, or anything about it.

Q. About what time of day did you first see Longstreet's troops in position after that?—A. I saw them in position, I think, somewhere about three o'clock, or a little before three.

1081 Q. This position that you have given General Jackson here as his right, was that based on the supposition that was given you by the counsel on the other side, or from your recollection?—A. I base nothing upon any supposition from anybody. I have had no conversation with anybody about these things.

Q. You misunderstood my question. Did you notice a mark that you put there?—A. I told you a while ago I was sorry that map was marked, because I wanted to do my own marking. I was trying to locate that thing all the time, and what bothered me was that somebody else had been marking.

Mr. MALTBY. There was only one mark there. That is the Henry Kyd Douglass map.

The WITNESS. Intermediate between Hood's left and what I recollect on Jackson's right there was a space. It was an elevated position, and this large battery not only guarded Hood's left, but Jackson's right, if necessary. That is the impression I wanted to make.

The examination of this witness was here closed.

B. S. WHITE, being recalled, was further examined as follows:

By Mr. MALTBY:

Question. Did you see General Longstreet's troops or General Hood's troops while they were forming in line of battle on the 29th, and after they were formed?—Answer. I saw Hood's command after they had taken position.

Q. But not while they were forming?—A. Not while they were forming.

By the RECORDER:

Q. Did you see them before they were formed? If so, at what time?—A. When we parted with them on the pike between Haymarket and Gainesville, we took the right and moved down to this position where we saw the column advancing. When that battery took position there and opened in that direction I went with a message immediately to General Jackson, and passed over the ground where I saw Hood's command. Afterwards, when I went on a message from Stuart to Lee, I found him on that hill in the rear of Hood's line and delivered my message to General Lee, looking to the south of the Warrenton pike on that hill.

Q. He was not in that position when you went to General Jackson with that message?—A. No, sir; he had not taken position there then.

By Mr. MALTBY:

Q. Have you been to the battle-field since the battle?—A. I have not.

The examination of the witness was here closed.

ROBERT C. SCHENCK, called by the Recorder, and examined in the city of Baltimore, October 22, 1878 (present, the Recorder, and Mr. Maltby, of counsel for the petitioner), being duly sworn, testified as follows:

Question. Where do you reside?—Answer. Dayton, Ohio; temporarily residing in Washington, D. C.

1082 Q. What rank and command did you hold in the military serv-

ice of the United States on the 29th August, 1862?—A. Brigadier-general of volunteers, commanding the First Division, Sigel's Corps.

Q. Finally you left the service with what rank?—A. Major-general. I was promoted to take effect August 30, 1862.

Q. The date when you were wounded in action?—A. Yes, sir.

Q. Where was that division early on the morning of that day, August 29?—A. We were upon the hills below Bull Run, up in the neighborhood of Young's Creek.

Q, North or south of the Warrenton turnpike?—A. South of the Warrenton turnpike.

Q. In reference to the Manassas and Sudley road, running up there to the stone house and Sudley Springs—east of it, or west of it?—A. That must have been west of it.

Q. Where did you go to from that point where you camped the night before?—A. Along the left side, the southerly side of the turnpike.

Q. What formation was your division in?—A. I had Stahel's brigade upon the right, and McLean's brigade to the left, moving along south of and parallel with the turnpike.

Q. Were they in column or in line of battle?—A. They were for the most part of the time in line of battle.

Q. About what time did you make that forward movement westerly?—A. We set out very early in the morning, I cannot recollect the hour, and continued moving, with rests and delays, until we reached the farthest point that we attained to, which, as I recollect, was a wood in which some of Gibbon's troops had been engaged the night before. After that, I withdrew toward the position that I had occupied in the morning, though not quite as far as to that position; by those two movements I occupied the day.

Q. In moving up to this position, did you have in the morning of the 29th August any enemy in front of you?—A. None, that we felt; throwing forward skirmishers and supposing the enemy was present somewhere. Pretty early in the day a force of the enemy was developed upon this ridge, where there were a number of batteries placed to our right; that would be to the north of the turnpike road.

Q. Do you recollect passing that lane, Lewis lane No. 1?—A. I have a very indistinct impression of it. I have a remembrance floating in my mind having crossed some road which was not the turnpike, but I don't recall it distinctly.

Q. At what time of the day did you reach your farthest point in advance?—A. I think it must have been somewhere about the middle of the day; perhaps a little earlier than the middle of the day.

Q. Did you see General Reynolds' division during that day?—A. No; but I understood he was off on my left.

Q. Did you see General Reynolds himself during the morning or afternoon?—A. No; I think not. I don't recollect.

1083 Q. How far did you get beyond the Gibbon's wood in which the wounded of the night before were?—A. I don't know that we got beyond the Gibbon woods. My remembrance is that the farthest point we reached was somewhere about the west edge of the Gibbon wood—that is, the wood in which Gibbon's troops were engaged the night before. We found there his wounded and the evidence of the battle that had taken place.

Q. Was anything done with these wounded that you found there?—A. I ordered all the men in that and the piece of woods this side of that, where there were, I think, a few scattered, to be sent to the rear and taken care of. I don't know that that is the Gibbon wood; I mean the

wood farthest in advance that I reached was the wood in which the engagement took place. My impression is we did not at any period go farther in that direction than to, perhaps, the west edge of that wood.

Q. Look at the map; which piece of timber is it that you consider to be the Gibbon wood?—A. *This* I suppose to be the wood. [In which the word "Warrenton" ends; marked S on the Landstreet map.] That I suppose is intended for the wood in which Gibbon's engagement took place.

Q. How long did your division remain in that woods?—A. We must have been in that wood, altogether, two or three hours.

Q. Did you see any battery of the enemy while you were in that position? If so, where was it?—A. There was a battery off to our right somewhere which I recollect all the more distinctly because it seemed to me to be detached from the general line of the enemy, and I conceived the purpose of attempting to capture it, and sent one of my staff over to reconnoiter with a view to see how it might be approached. But about that time Milroy, who was engaged with the enemy off to my right, communicated with me, or General Sigel for him—I think the message came from Milroy himself—begging assistance, and I detached Stahel's brigade to support Milroy northeast of the pike, and then gave up the idea of attempting to capture that battery.

Q. That battery was in the neighborhood of where?—A. It was on a hill on my right, to the right of the wood where Gibbon's fight had taken place. It was upon elevated ground, and seemed to be the spur of a hill. I thought we might by a sudden and decisive movement upon it capture it.

Q. While you were up in this position, McLean's brigade, I understand, was on the left. What was the position of Reynolds' division of Pennsylvania Reserves as reported to you at that time in reference to your own position?—A. I did not see them, but they were reported to me as being upon our left, and I may add that it was reported to me that they had stationed a battery somewhere in advance of Gibbon's wood, I think Cooper's battery.

Q. In which direction was that battery operating?—A. I did not see the battery.

Q. At what time did you quit with your division this Gibbon wood?—A. I should think, to the best of my recollection, somewhere between one and three o'clock. I don't think I can be more positive than that.

My recollection is that it was some time after noon.

1084 Q. To what point did you go then with your division?—A. In consequence of reports made to me in reference to the movements of General Reynolds, I thought it best for me to fall back, and I came into a strip of woods which I suppose to be these [south of the syllable "ville" in "Gainesville"]. I formed in line of battle near the west edge of that woods. There we lay most of the afternoon.

Q. Up to what time?—A. I can scarcely tell you. I should think at least until the middle of the afternoon, perhaps later. I recollect withdrawing from that point from wood to wood as we had advanced. We found it quite late in the afternoon, or quite sunset, by the time I reached my original position. The whole distance, I should think, was about two miles from the point where we started in the morning to the furthest point to which we advanced.

Q. While you were in the Gibbon wood, what enemy, if any, did you see in your immediate front?—A. I cannot say that I saw any enemy in our immediate front. There were skirmishers in that direction, and as my skirmishers were thrown forward we would have an occasional

shot, but there seemed to me at that time to be no enemy in front—in my immediate front. The first intimation that I had that the enemy in considerable force were upon our left, was through Colonel McLean, the commander of my second brigade, who told me that a messenger, or staff officer, or orderly, or some one from Reynolds, apparently with authority, had come to him, as he was in command of a brigade, and communicated the fact that the enemy were upon our left, and I think that was coupled with the information that Reynolds intended to fall back. I tried to communicate with Reynolds again, but did not succeed, but I thought that there was no occasion for immediately falling back; but not finding any response from General Reynolds, I concluded to withdraw slowly to at least a short distance and then come across an open space into the next wood [into a little strip marked S 2], where I rested the troops in line.

Q. While you were holding position in that little strip of woods, do you know whether or not the enemy obtained the possession of the Gibbon wood?—A. I am satisfied that they were not there in any force; they had their skirmishers thrown forward as I had men toward the Gibbon wood, and there were occasional shots fired with or without good cause for them, but there was no movement in force, nor was there indicated to me any presence of an enemy in force.

Q. Can you fix with any degree of relative certainty the time in the afternoon when you quit the little fringe of woods marked "S 2"; whether it was two or three or four or five or six o'clock?—A. The days in August are pretty long. I should say it was at least the middle of the afternoon, or probably later. I reached my conclusion from measuring it by the movement forward and the gradual withdrawal of the troops. I should think it was after the middle of the afternoon.

Q. Do you mean to say three or four o'clock?—A. I should think later, perhaps; from one to seven. I should think it was as late as four o'clock; of that I cannot be positive at all. Such is the impression when I attempt now to recall the circumstances and the movements.

Q. Have you seen the official report of the action of your division that day, made by your assistant adjutant-general, Colonel Cheseborough?—A. Yes.

1085 Q. Was that report made under your direction or with your knowledge?—A. It was brought to my attention after it was made, when I was able to see and read it, and of course I read it with a great deal of interest, but my recollection is that I was neither able to dictate to him nor did I give him any points in regard to his report unless it was to suggest that favorable mention should be made of certain officers.

Q. Did you see that report before it was finally filed?—A. I doubt if I did. I think it must have been before I saw it.

Q. During the day did you know of any battle in progress at any time; if so, what was its character, and where was it?—A. The fight was principally on our right. There was apparently a range of batteries to our right, which in the earlier part of the day directed their fire against a battery of Benjamin's that was drawn up upon the spur of a hill. There was fighting which I did not see, but which was reported to me as going on, and of which I could hear by the continual reports of musketry, that I supposed to have been Milroy's forces. But on our side of the turnpike there was no serious engagement of any kind during that day.

Q. Do you know when any of the rest of General Lee's command of the army of North Virginia came to the assistance of Jackson's forces?

If so, when?—A. I do not; I can only give you the impression we had at the time, of when they effected anything like a junction.

Q. What was it?

Mr. MALTBY. I object to impressions.

A. I think there was no junction of their forces, until in the night or very early next morning. That I do not know, however. That was our conclusion, situated as we were.

Q. This firing that you heard to your right, what was its character—artillery, infantry, or both?—A. Principally artillery.

Q. How long did it continue during the day?—A. That I cannot tell you, but during a part of the time there was evidently a sharp engagement with small-arms.

Q. Towards dusk, do you know of any firing? If so, what was its character?—A. I don't recollect.

Q. What were the losses of your division that day?—A. I cannot tell you without refreshing my recollection.

Cross-examination by Mr. MALTBY:

Q. Where did you start from on the morning of the 29th?—A. On these hills, as I recollect, south of the turnpike, and not far from the position where the fight took place on the 30th.

Q. Under whose immediate command were you?—A. General Sigel's.

Q. At what time did you leave that position? Was it near the Chinn house, or where was it?—A. It must have been somewhere in the neighborhood of the Chinn house. I recollect the Chinn house more in connection with the fight of the next day. It was upon those hills.

Q. What time did you leave that position?—A. Quite early in the morning. I cannot indicate the hour.

Q. At daybreak?—A. I think I ordered the men to take their
1086 breakfasts, but it must have been an early breakfast; it must have been at least by sunrise or earlier. We began the movement, perhaps, at daybreak.

Q. Where did you first take position in line of battle?—A. That I cannot distinctly recollect, but it was some time before we reached the wood where Gibbon was engaged, and I think the greater portion of the distance we were thrown into line, and Stahel with his first brigade marching on the right and McLean on the left in line.

Q. Those were the only two brigades composing your division?—A. Those were the only two brigades that I had there at that time.

Q. How far did Stahel advance with you?—A. Up to near the wood in which Gibbon was engaged, I think.

Q. Did he retire before you retired from that position?—A. He was sent over to sustain Milroy.

Q. Then you were left with McLean's command alone?—A. I think Stahel did not join us until after the backward movement.

Q. Did Stahel move up on the right of the turnpike, in advancing?—A. I think a portion of the time his command was upon the right of the turnpike, but I am not sure that his right did not rest on the turnpike, making the whole of my line to the left of the turnpike. I recollect riding in the turnpike myself.

Q. Did you march rapidly from your position where you breakfasted to where you formed the line of battle; previous to your forming line of battle, did you advance rapidly?—A. No. My recollection is that all the way through the day we moved but slowly from one patch of woods to another across the intervening distance, feeling our way; we would generally rest in a piece of wood and sent forward skirmishers, and then move forward across the open space.

Q. How many men had you in your command?—A. I cannot recollect; they were average brigades.

Q. Do you recollect a battery under Benjamin?—A. Yes, sir.

Q. Where was that stationed?—A. On a point which I could indicate if I were on the ground.

Q. Have you been on the ground since the battle?—A. No; not that part of the ground. Immediately after the war I went down to Manassas and went across in a wagon, out of curiosity, to see the ridge upon which I had been wounded, but I did not go over the field.

Q. How far to the front did Benjamin's battery get, as you recollect?—A. It was placed to our right. I should think somewhere upon a spur about *here*.

Q. Across the pike from you?—A. Across the pike.

Q. How far to your rear was he, or to your front, when you reached that farthest point, according to your recollection?—A. It was some distance to the right, and some considerable distance. I cannot say how much; possibly a quarter or a half a mile to the rear, the furthest point that we reached; half a mile, I should think, at least; probably more.

1087 Q. At what time did you reach the position in which he was placed?—A. I was in the advance of that position before he was placed there; it was to meet the fire from these batteries as we advanced that I had Benjamin's battery placed upon an eminence here; and I discovered very soon afterwards that he had drawn upon himself the concentrated fire of a number of batteries upon the stony ridge where the enemy were beyond.

Q. Where were you when Benjamin's battery was placed in the position of which we are speaking?—A. I think I may have been, as I said, from a quarter to a half mile further west than the point where he was placed on the south side of the turnpike.

Q. With reference to your advanced point, where were you at the time Benjamin was placed where his batteries were?—A. That I cannot tell.

Q. Have you any recollection as to whether you were then in Gibbon's woods?—A. I do not recollect. My impression rather is that I was not at that time in Gibbon's wood.

Q. How long after Benjamin being placed in that position do you think that you reached Gibbon's wood?—A. I cannot tell you.

Q. How long after that opening fire began with such severity upon Benjamin?—A. After he was placed there?

Q. Yes.—A. I think he had occupied the position for some little time. Perhaps half an hour or more. He was firing an occasional shot before the enemy seemed to discover his range and position and concentrated their fire upon him.

Q. In what direction from your own command were those guns at that time? Were they immediately upon your right or far to your front and right?—A. You mean Benjamin's?

Q. No, sir; I mean the rebel battery?—A. No. If this map is to be relied upon as showing where the ridge is, if the line had been continued they would have made an acute angle with the point towards which I was moving.

Q. How far would it have been, according to your recollection, from your front to the point where their line, if prolonged, would have struck the turnpike road?—A. Their line, if prolonged, I should have thought would strike the road some hundreds of yards, perhaps a quarter of a

mile, beyond the Gibbon woods; that is, if their line had been protracted.

Q. How long did you remain in the position where you were when Benjamin's battery opened?—A. I cannot tell you; I don't recollect.

Q. You were there in line of battle perhaps half a mile in his front, or perhaps a quarter?—A. From a quarter to half a mile in front.

Q. Did you lie a long time in that position before advancing?—A. We moved slowly, resting in each of these successive pieces of wood, and then marched more rapidly across the open spaces between, after having felt the wood in advance of us, until by these successive
1088 delays and marches, occupying the forenoon, we reached finally what we call the Gibbon woods.

Q. Supposing that the point marked B is about the point where Benjamin's battery was——?—A. Benjamin's battery was not on that side of the road, as I recollect.

Q. Supposing that was the point where he opened upon the enemy, indicate how far you would have been in advance, according to your recollection?—A. I will not suppose that Benjamin's battery was where I think it was not placed, on the side of the road.

Q. If Lieutenant Benjamin has sworn that that was his place, and if you place his battery there as opening, how far in advance of that position would you judge you were?—A. Wherever his battery was we were to his left in advance, and I should say from a quarter to a half a mile.

Q. Do you think you were in this strip of woods marked S^2 at the time his battery opened?—A. That, as I understand the map, is a strip of woods back to which we fell when we left Gibbon's woods, where I formed a line fronting towards the open space and towards the Gibbon woods.

Q. Do you think that is the place where you were when Benjamin's battery was placed in position?—A. I do not recollect. I cannot recall the hour.

Q. Do you think that if that was the position of Benjamin's battery you were in the woods to the east of Lewis lane No. 1 at that that time?—A. I do not bear in mind the lane distinctly, except that in our march I recollect to have crossed a road.

Q. I merely indicate that as a patch of woods in order that it may be stated upon the record. Do you think you were in that patch of woods?—A. No, I cannot say that I think anything about it. My impression is we were further in advance than that.

Q. How long did you remain in that position; until Benjamin's battery had ceased firing?—A. I communicated with Benjamin after he had been for some time in that position, inquiring whether he was able to maintain that position without too much loss, too much exposure; and my recollection now is that I had a report from him that a number of his horses and men were killed, and he must withdraw or he would not have horses to bring away his guns; he left before we fell back.

Q Did he leave before you got to Gibbon's woods?—A. I think not; I am not certain.

Q. Did he leave long before you left Gibbon's woods?—A. I cannot tell. I recollect the incident but not the time.

Q. How do you fix it as between one and three o'clock the time when you left Gibbon's woods?—A. Because we consumed about half a day or more in advancing to that point; we rested there for some time, and we consumed pretty much all the rest of the day in regaining our original position to which we withdrew. I make it out, therefore, that we must have reached there about midway of that time. I will add that

after I was able to examine the report made by my aide, I found that he had stated the time in his report and was satisfied that he had
1089 stated it correctly; and I think, though I have not his report now to refer to, that he makes it somewhere between one and two o'clock.

Q. Have you ever read the report of General Reynolds?—A. I dare say I have, but not for a long time.

Q. Did General Reynolds retire from his advance at the time that you retired?—A. General Reynolds, as I have stated, was reported to be commanding the troops, which were on my left, when we were up in the Gibbon's woods. I had no intention of retiring from that position then, at least, nor did I know that it would become necessary for me to do so; we had then advanced about two miles on the south side of the road from the point from which we started in the morning [Warrenton turnpike]. I sent a staff officer to communicate with General Reynolds; he returned and reported to me that there were indications of the presence of the enemy off in the front of Reynolds' skirmishing parties or pickets, and that he had mistaken his way, as he thought, and came very near being captured. I heard subsequently, or about that time, from Colonel McLean, then commanding my second brigade, that he had received a message from General Reynolds, which had been delivered to him instead of being conveyed to me, stating that Reynolds found the enemy were on his left and to my left, of course, therefore, in sufficient force to make him think it advisable to withdraw. I had no proof of any such indications, and I wanted Reynolds to hold on, and sent accordingly to get into communication with him so as to preserve our line, but my message, I think, never reached him, or at least he had left his position, as was reported to me, and I did not have communication with him.

Q. Is your recollection as to the time when you retired from your advanced position so strong that if General Reynolds swore, December 30, 1862, that he retired between twelve and one o'clock, or it may have been after one, that you would still say that it was between one and three, or nearer three, that you retired from Gibbon's woods?—A. I should not base my recollection upon anything that you informed me as to Reynolds' recollection. My remembrance is, as I now recall the circumstance, that it was not earlier than one, nor perhaps later than three; it was after I had had indication from Reynolds, derived in the circuitous way I tell you, of his purpose to withdraw, and while I was in the Gibbon's wood; and a messenger was sent to communicate with Reynolds and we found he was gone, so that he must have retired before I did. I should say I certainly did not retire before one, and as certainly not after three, but I do not think it is possible for me, from my present recollection of the circumstances, to fix it more definitely than that.

Q. What was your final position that evening?—A. We fell back to this hill, which looks down into a ravine occupied by Young's Creek.

Q. You moved back to Young's Creek, on the ridge just behind that?—A. Yes. I slept in a little grove—it could scarcely be called a grove; it was a clump of woods; it was made disagreeable by some cattle that had taken shelter there during the day; they were driven out that I might find shelter. It was nearly dark, and I went soon to sleep.

Q. At what time did you reach that position?—A. It must have been, I should think, not earlier than sunset; it was near the end of the day.

1090 Q. Was there no fighting going on on the pike in your vicinity

at that time?—A. I have an indistinct recollection that shots were fired along in the evening. I cannot recall the circumstances.

Q. Did you know of King's division?—A. I had no immediate personal knowledge of them.

Q. Did you not know that they had a very severe fight in the neighborhood of Groveton that evening?—A. Evening of the 29th?

Q. Yes.—A. I think I must have known of it.

Q. In reference to that fight what was your position when it took place?—A. I was back on this hill, looking down into the ravine; I should say at least as early as sunset.

Q. Was your whole line back there?—A. Yes, sir. I had withdrawn my force.

Q. Was General Reynolds in line with you?—A. I do not know. The next day, the 30th, I ascertained that Reynolds was upon my left and marched around to my right.

Q. I am not inquiring about that.—A. But by that means I know he was on my left the next day, but whether during that night I do not know. I supposed I was supported by the troops of McDowell and Reynolds on my left all this while.

Q. Did you state that you had any watch that day?—A. No. I have stated nothing about it.

Q. Did you have a watch?—A. I am in the habit of carrying a watch. I don't recollect to have been without one for a great many years.

Q. Did you fix times at all by reference to your watch on that day?—A. I dare say I did at the time, but I have no recollection now when or where I took out my watch to consult it as to time. This is sixteen years ago, you must recollect; but certain prominent facts or incidents would be, as it were, burned upon my mind without a recollection of the connecting details.

Q. Do you say that you were in the woods, the Gibbon woods, when General Reynolds retired?—A. Yes; I should say I was.

Q. Then this statement of your aide-de-camp, Colonel Cheseborough, is incorrect?—A. What is the statement?

Q. "With these re-enforcements we determined to advance again and reoccupy the woods in front of the cleared space, and communicated this intention to General Reynolds."—A. What re-enforcements?

Q. From Stahel's brigade.—A. Stahel retired.

Q. Yes. "He however, had fallen back on our left some distance to the rear. He was, therefore, requested to make his connection with our left."—A. My impression was that I got this report as coming from General Reynolds in relation to his movement when I was in the Gibbon woods. When I come to consider the matter a little further my remembrance is, as I think I said before, that it was not until we fell
1091 back to the strip of woods behind the Gibbon woods [S 2] that Stahel rejoined me, and therefore the probability is that I may have been there, and prevented from making an advance again upon the Gibbon woods by hearing that Reynolds was not going to remain on my left.

Q. You have stated that the enemy did not occupy Gibbon's woods during the time that you were in this strip of woods marked "S 2."—A. No. I am very sure they were not.

Q. Could you see through those woods?—A. No.

Q. Then how do you know?—A. Because I had skirmishers forward, observing Gibbon's woods, while I lay in this strip here.

Q. What time did you lie in that strip?—A. From the time we fell

back from Gibbon's woods between one and three o'clock, and we lay for several hours in the strip of woods.

Q. Do you know how far your skirmishers advanced into that wood?—A. No.

Q. Do you know where the line of the enemy's skirmishers was?—A. The enemy had skirmishers, I think, in the same wood.

Q. Were they advanced far into the wood?—A. I do not know. I was not on the skirmish line, but there was no serious encounter between skirmishers anywhere; still we knew of the presence of the enemy by an occasional shot fired—or supposed presence.

Q. In reference to the time that you retired, do you think that it was rather two o'clock, as between one and three, or was it before or after that period?—A. I should say nearer two than one. I think when I say from one to three that about the average of that, two, would be perhaps the time. I will add here, because it is a part of my answer, that I may be distinctly understood, I am perfectly certain that the enemy did not occupy in force that which you call the Gibbon wood while I was yet in this strip of woods with my line of battle there. [Marked S^2.] While I was remaining in that wood marked S^2 the enemy did not in force at any time occupy those woods.

Q. But you did not see them yourself?—A. No, sir. It would be very easy to distinguish what you call Gibbon wood S^1 from the other woods by the presence of indications of a battle having taken place there the night before; the wounded that we found there and the dead from that battle; and also somewhere in the turnpike, near there, I stopped to look at a caisson that was blown up.

Q. The way you have of fixing this in your mind is only in reference to the time occupied in advancing from your position in the morning by slow stages up to that point, and retiring by slow stages to a point where you camped at night somewhat in advance of where you marched from in the morning?—A. No. If I were called upon now for the first time after a lapse of sixteen years, perhaps I should have no other standard by which to determine it than a vague recollection of that kind of measuring—marching and falling back; but after the battle, within a short time, within a few weeks, as I was well enough to become acquainted 1092 with what was said and known about the battle, there began in my mind a distinctive impression that it was not later than 1 o'clock, that my aide, who had made a report, was not wrong in his report; and by that help I have ever since carried in my mind a remembrance of the time.

Q. When did you recover from your wound?—A. I was carried to Washington, and I was out of the hotel in about seven weeks.

Q. Had you seen the report prior to your coming out?—A. Yes. Colonel Cheseborough remained with me during all or most of the time while I was lying wounded, in attendance upon me, with two or three of my staff; and during that time, as soon as I was well enough to know what he had reported, and what had been done, my attention was called to it, and he related to me the sort of controversy into which he had been drawn by reason of this statement of General Reynolds.

Q. How were you wounded the next day?—A. Through the right arm, the radius; that was my most serious hurt. I was hit three times; the end of one finger was shot off; I had a contusion in my side, and was saved from a serious result by my sword-belt; so that the only serious injury I received was in my right arm.

By the RECORDER:

Q. You say that you are satisfied that the enemy had substantially

no considerable force in the Gibbon wood after you had fallen back to the fringe of woods S^2?—A. Not while I remained in the next woods east [S^2].

Q. How did you know that?—A. The space between is not so great but that you could fire across from one wood to the other. If we had had artillery, or they artillery, we could soon, either of us, have riddled the other out from the wood. That is one reason why I suppose they were not there in force. Another reason is that my skirmishers were out in advance and entered that wood, and occasional shots were fired over to the left of the wood, indicating that the enemy also had skirmishers in that neighborhood, but nothing more. My conclusion from that condition of things was that the enemy would not possibly be there in any very great force or any force at all. You could not very well be in one strip of woods, with another strip of woods opposite to you, neither of them large, without knowing whether there was an enemy in the other wood. An army has a good many eyes and feelers.

Q. Assuming that Lieutenant Benjamin was in a position just south of Groveton, right on the pike, firing off in a northwesterly direction toward the word "stony," where would that bring him so far as your troops were concerned?—A. I was to his left and in the advance; wherever I was to his left and advance. My impression would lead me now to think that he was just on the north side of the turnpike; he could not have been very far from the turnpike; he was upon a sort of spur or hill. I have not been on the ground.

By Mr. MALTBY:

Q. Now I want to ask you whether the strip of woods in which you lay to the rear of Gibbon's woods was not commanded by the artillery to your right and front?—A. I should think not. I think the open space was rather farther to the right, and that there is some high ground along here; at any rate we were not disturbed by them; they did not fire upon our flank.

1093 Q. Could not a force of the enemy have a line of pickets in the edge of this Gibbon's woods without your knowing it—in the westerly edge?—A. Hardly, until after we left this strip of woods.

Q. Were there skirmishers thrown out in your front?—A. I hardly think they could have been there at any time until we left in the middle of the afternoon; I think we should have known it. As I see by your map, and as I have always understood, there are other portions of the wood farther west still, and about these I can give no information. There may be a discrepancy between my recollection and the recollection of others in regard to the piece of woods, but I speak quite confidently that Gibbon's woods up to the time of my leaving that strip of woods to the east were not occupied by the enemy.

Q. Did you carry from Gibbon's wood the Union dead and wounded?—A. Yes; it was left to others to execute the order. I gave the order that they should be taken from there. While we were in the wood I recollect them gathering the soldiers who had suffered in the engagement the night before.

By the RECORDER:

Q. Do you mean wounded or dead, or both?—A. I think both. I was particularly concerned for the wounded.

Q. Do you recollect firing by the enemy or any battle on your left?—A. I do not recollect.

The examination of this witness was here closed.

THIRTY-THIRD DAY.

GOVERNOR'S ISLAND, NEW YORK HARBOR,
October 24, 1878—10 a. m.

Pursuant to the foregoing orders and adjournment, present, Col. George W. Getty, U. S. A., and the Recorder; also Fitz-John Porter, the petitioner, and Messrs. Bullitt and Maltby, of counsel. Absent, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.

Colonel GETTY said: There is a telegram from General Schofield to the effect that he will not be here to-day, from the fact that he is sick and unable to attend. The Board will therefore adjourn until ten o'clock Monday morning.

The RECORDER said: I have a telegraphic dispatch from General Pope. He says:

FORT LEAVENWORTH, KANSAS, *October* 21, 1878.

To Maj. A. B. GARDNER,
Recorder Board of Officers,
Corner Greene and Houston Streets, New York:

I transmit for your information a copy of a telegram received from General Schofield, President of the Board, and a copy of my reply thereto:

"NEW YORK, *October* 17, 1878.

"Brig. Gen. JOHN POPE, *Fort Leavenworth, Kansas:*

"In view of the fact that the counsel for the petitioner have stated that they 1094 believe justice to their client requires your presence here, the Board requests that you appear as a witness before them at Governor's Island next Thursday, the 24th instant.

"J. M. SCHOFIELD,
"*Major-General and President of the Board.*"

"FORT LEAVENWORTH, *October* 21, 1878.

"General JOHN M. SCHOFIELD, *New York:*

"I have received your dispatch of the 17th instant in which you state that, 'In view of the fact that the counsel for the petitioner have stated that they believe that justice requires your presence here, the Board requests that you appear as a witness before them at Governor's Island next Thursday, 24th instant.' In reply I have to say that if the petitioner considers my presence as a witness necessary he should apply to have me subpœnaed as a witness for him; only as a witness for him or for the government can I be expected, with any semblance of legality, to appear as a witness in the case. To do so on a mere request of the Board would be to place myself in a position not only false, but in every respect extraordinary and unknown to the laws or to the practice of the civil and military tribunals of the country. Whilst I stand ready to appear before your Board in any position known to the law or practice, I cannot appear as a volunteer witness in the case on a mere request, and without knowledge whether I am called for the government or the petitioner. As you state that I am requested to appear as a witness in the case on the statement or suggestion of the petitioner, it is to be inferred that I am called as a witness for him; but this fact is not distinctly stated, nor does your telegram convey a subpœna, but only a request. To a subpœna regularly issued to appear as a witness on either side I will cheerfully and promptly respond. I am entirely willing to appear as a witness in the case, and desire simply to be placed in the same relation to the Board and the parties in controversy as that occupied by all the other witnesses.

"JOHN POPE,
"*Brigadier-General, U. S. A.*"

Colonel GETTY. Action upon that will have to be deferred until the Board assembles again.

An adjournment was then taken until Monday, October 28, 1878, at 10 o'clock a. m.

Subsequently General Terry arrived at the rooms of the Board, all being present as before, and announced that a dispatch had been received by him from General Schofield, stating that a communication

received from the Secretary of War relative to the appearance before the Board of General Pope required a meeting on the part of the Board, and naming, at the convenience of the other two members of the Board, the Sturtevant House, in the city of New York, on the following day at 11 o'clock, as the time and place for the meeting of the Board.

THIRTY-FOURTH DAY.

GOVERNOR'S ISLAND, N. Y. HARBOR,
October 28, 1878—10 a. m.

The Board met pursuant to the foregoing orders and adjournment. Present: Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

GEORGE L. ANDREWS, called by the Recorder, being duly sworn, testified as follows:

Direct examination:

Question. State your rank and residence.—Answer. Professor, Military Academy, residing at West Point, N. Y.

1095 Q. What rank and command did you hold in the military service of the United States on Friday, August 29, 1862?—A. Colonel Second Massachusetts Volunteer Infantry.

Q. With what rank did you retire from the Army?—A. Brigadier-general and brevet major-general of volunteers.

Q. In what corps were you?—A. Banks' corps.

Q. Where was your regiment on that day?—A. At a place that I was told was Bristoe Station, Virginia.

Q. Where was the remainder of the corps?—A. It was there also, so far as I know; I am not aware of any part of it being away.

Q. What at that time did you judge to be the effective strength of the corps?—A. I had no real means of knowing it; but supposed there were about five thousand or six thousand men.

Q. How many divisions were there that day?—A. Two, I think; I am not sure as to what the organization of the corps at that time was; I recollect the division that we belonged to, and there was still another division; whether the regulars were there I do not know.

The RECORDER. I have been unable to find the official return of that corps; that is why I have called this witness.

Cross-examination by Mr. CHOATE:

Q. Have you any means of fixing the hour at which you arrived at Bristoe Station?—A. No, sir; I cannot recollect.

Q. Whether it was morning, noon, or night?—A. I cannot recall.

Q. Do you not recollect that it was after dark?—A. I cannot recollect at all; I remember being there the 28th, 29th, and 30th, and leaving on the morning of the 31st. The circumstances of arriving there have gone from my memory.

Q. Do you mean to say you were there three days before orders came for you to move anywhere?—A. We were there somewhat on the 28th,

whether the whole day I do not recollect; the 29th we were there; the 30th we were there, and the morning of the 31st we got orders to move.

Q. Did you see or know of the orders that were received while your division was there?—A. Only that order to go on the 31st.

Q. That was to go where?—A. It was to burn our baggage.

The PRESIDENT OF THE BOARD. Perhaps the investigation is going beyond the limits of this subject.

Q. Did you ever see the order directing the movement of your division to Bristoe?—A. Not to my recollection.

Q. Do you know how it happened that you remained at Bristoe three days without any orders?

(Objected to by the Recorder as containing an assumption.)

Question withdrawn.

By the RECORDER:

Q. You say that you fix your recollection of being there at Bris-
1096 toe on the 29th. How do you fix it?—A. There was a dispute that occurred between me and an officer on the following day. He said there had been a battle on the 29th. I said "Where?" He said within five or six miles of us. I thought it was impossible; that I should have heard the cannonading.

This witness, being recalled, was further examined, as follows:

By Mr. CHOATE:

Q. When your division arrived at Bristoe what part of the Army did you find there already?—A. I do not recollect finding any.

Q. Was General Pope there?—A. Not that I saw. I recollect being placed, with my regiment, by the side of a stream, and I staid there.

Q. Was General Porter there, or any of his corps?—A. Not that I recollect; they may have been.

Q. You would have been pretty likely to observe it if there had been an army corps there?—A. Yes; if there was a large body of troops, I think I would.

Mr. CHOATE. The witness may be mistaken in regard to the date. The proof has been undisputed before that General Pope was there on the morning of the 28th until the middle of the day, and General Porter did not leave there until early on the morning of the 29th. That is common proof. I wanted to call the attention of the witness to this thing, thinking that he might be mistaken in the date.

Q. Look at that order from General Pope, written at Bristoe on the forenoon of the 28th, and see if that recalls your recollection. [Book shown to witness.]—A. No; we were there all day on the 29th. So we must have arrived there the day before, as well as I can recollect.

By the PRESIDENT OF THE BOARD:

Q. On the 29th, 30th, and 31st you were at Bristoe?—A. That is the best of my recollection.

The examination of this witness was here closed.

HORATIO G. SICKLES, called by the Recorder, being duly sworn, testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Twelve hundred and nine Wallace street, Philadelphia.

Q. What position did you hold in the military service of the United States on the 29th of August, 1862?—A. I was colonel of the Third

Regiment Pennsylvania Reserves, second brigade. I do not recollect what our division was. We returned from the Peninsula and rejoined our old corps.

Q. With what rank did you leave the service?—A. Brevet major-general.

Q. Whose corps?—A. General McDowell's.

Q. Who commanded your division?—A. General John F. Reynolds.

Q. Who commanded your brigade?—A. General George G. Meade.

Q. Do you know where your regiment was encamped on the morning of Friday, August 29, 1862, if it was encamped at all, or bivou-
1097 acked?—A. I took it that, in looking over the map shown me here, it was near the Lewis house on the battle-field.

Q. What did your brigade do that morning of August 29, 1862?—A. We broke camp about daylight, I think, and moved out to the front on the left of Sigel, I think.

Q. How long did you remain with the brigade?—A. It was probably eight o'clock, or nine, in the morning; eight, perhaps.

Q. When you left it?—A. Yes.

Q. You did not then remain with it the remainder of the day?—A. No, sir; I did not.

Q. You left your regiment at that time?—A. Yes, sir.

Q. On account of illness?—A. Yes; I was sunstruck a few days previous.

Cross-examination by Mr. BULLITT:

Q. You say it was in the neighborhood of the Lewis house where your camp was; will you indicate on the map where it was?—A. I don't know that it was really the Lewis house; I judge from the location. I think that here is about the position (the Lewis-Leachman house) where we were massed that evening; but I am not very sure; I have such an indistinct knowledge of the ground, and was with the command so little, that it would be hardly fair to depend upon my testimony.

Q. You really do not recollect where it was?—A. No; I have not a distinct recollection; but I think that is the neighborhood, judging from that stream there. (Witness indicates the Lewis-Leachman house.) I saw a map upstairs which locates a stream of water which I am pretty sure I have a recollection of.

Q. May it not have been this stream (Chinn's Branch) or this (Young's Branch)?—A. I think it was not so far to the rear as that.

Q. Do you feel any certainty about it?—A. Of course I am not certain; but yet I am inclined to think it was here (Lewis-Leachman house).

Q. How far did your regiment move in the morning before you left it?—A. About probably quarter of a mile.

Q. Not farther?—A. No, sir.

Q. You left them halted?—A. Yes.

Q. That is all you know about it?—A. Yes, sir.

By the RECORDER:

Q. Is there anything else in the neighborhood of that location that fixes it in your recollection?—A. On the previous evening, the 28th, I think, I recollect there was a battle took place, or a fight, between Gibbon's troops and the enemy near our front, and General Meade's brigade was ordered front. We advanced some distance, and formed on a hill where we could overlook the fighting. It was then about sunset. I think we remained there until dark, when the firing ceased; then we returned again to where the first and third brigades were in camp.

1098 By Mr. BULLITT:

Q. How far forward did you move on the evening of the 28th from your camp?—A. I do not believe I could locate that with any certainty, or fix it in my mind. We moved forward and deployed on a hill, where we could overlook, to some extent, the fighting.

Q. Then I understand, you fell back again to your camp?—A. Yes; we did.

The examination of this witness was here closed.

The RECORDER said: This is all the testimony that I have, except that of the witness Dobson, who was expected here to-day, but who I presume is absent on account of illness.

I have information from Maj. Thomas F. Barr, judge-advocate, at Saint Paul, that he had received the cross-interrogatories which had been sent to him, and that he would make every effort to obtain replies from General Rosser, who had gone away on another survey.

His answers to the interrogatories that I sent him were very important, and I should not like to close without having the deposition upon the record; I regret that the counsel for the petitioner did not deem it proper to send the cross-interrogatories at the time that I sent my direct interrogatories.

O. D. GREENE, called on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. BULLITT:

Question. State your rank in the Army.—Answer. Major and assistant-adjutant general; stationed at Newport Barracks, Kentucky, headquarters Department of the South.

Q. What was your rank in the month of August, 1862?—A. I was lieutenant-colonel of volunteers and assistant-adjutant general of the Sixth Corps.

Q. Were you with General Pope's army at that time; and, if so, where were you on the 31st?—A. I reported for duty with the army on the morning of the 31st of August, at daylight, and continued with the corps for some months.

Q. Did you see General Pope and General Porter together about that time; if so, state how often and where?—A. I saw Generals Pope and Porter together on that day, the 31st, and again at Fairfax Court House, I think on the 2nd of September. I saw them together twice that I distinctly recollect, and I think positively three times. I have often thought it was three times, but when it comes to testifying I can only recollect twice.

Q. Do you know what the occasion of these meetings between them was?—A. I cannot testify positively to that; my impression is that it was on the occasion of a sort of council of war both times. I know that General Franklin, the corps commander, desired me to go with him on both occasions; asked me to accompany him to army headquarters; and the idea I received from him was that it was a council of corps commanders, but whether it was so absolutely I cannot recall.

Q. What were the apparent relations between General Porter and General Pope during those conferences of which you have spoken?

(Objected to by the Recorder.)

1099 Q. What did you see as to the relations between Generals Porter and Pope at those interviews?—A. I saw them together. I think both times there was nobody else present, that is, exactly within

the range of hearing; I think on both occasions they were on the porch, and General Pope was giving General Porter instructions; nobody within six or eight or ten steps of them; the tone of voice was an ordinary tone, and people at the distance that I was could have heard a detached word without hearing the conversation. The tone and manner were all perfectly perceptible, and I never had the slightest doubt that the relations between them were, as far as I could see, perfectly friendly; in fact, I was impressed with the appearance of both. I thought—I did not doubt—that General Pope was relying very largely upon General Porter.

Cross-examination by the RECORDER:

Q. At what time do you say that you arrived at this corps at Centreville?—A. I joined them very soon after daylight on the morning of the 31st.

Q. Was the corps with you or did you join them?—A. I joined the corps. I had come out from Washington the evening before.

Q. Do you of your own knowledge know the occasion of the meeting or the conversation between Generals Pope and Porter?—A. No, sir.

Q. You say you know that General Pope was relying largely upon General Porter; how do you know it?—A. I did not state so; I merely stated that the impression was produced upon my mind very strongly by their manner and tone and style of conversation, that one was relying upon the other very much. I do not profess to have heard the language passing between them; on the contrary, I should have considered it improper and have gone further off if I heard the language.

Q. What was there particularly about the manner of General Pope that impressed you with the belief that he was relying very largely upon General Porter?—A. His manner; he looked to me as if he had been exceedingly tired physically and mentally. I had never seen him before, and looked at him very intently; he was a man occupying a very important position; I was new to the Army, and I noticed that; I remarked him very closely. He produced an impression upon me of a man who had gone through a tremendous mental and physical struggle; that he was completely fagged out; that here was a man that he could count upon and rely upon. Mind you that I do not say that I know that was the fact, but that was the impression produced upon me by the interview, and seeing the manner and hearing the tone in the conversation.

Q. Did you see him shake hands with General Porter?—A. I cannot recall that.

Q. Or put his arm on his shoulder, or anything of that sort?—A. No; I could not say.

Q. Then from the fact that General Pope looked very much tired and "fagged out," and showed evidence of having gone through great mental exertion, &c.—I presume General Porter looked very fresh and strong and vigorous, and that led you to suppose that General Pope was relying upon him?—A. If you desire to ask me what the impression produced upon me by his manner and conduct was, I will give it to you with pleasure.

1100 Q. Certainly.—A. His manner struck me as being exceedingly zealous and desirous to do his whole duty.

Q. What was there in this manner that led you to that conclusion, as you were not near enough to hear anything?—A. I was close enough to see the manner of the interview; I was close enough to note their countenances and the expression of their faces. If you hear

the tone and see the expression of the faces, and the gestures, and manner and appearance, it is capable of producing an impression. As to hearing the language, the impression produced upon my mind was that General Porter was more than usually—he was remarkably zealous and earnest in his manner; perfectly respectful, and seemed to be desirous of receiving the exact instructions of General Pope. I can hardly command words to give fully my exact impressions; but it struck me as being a remarkable interview, that on one side was a man who was counting upon the loyal and capable support of the other, a competent lieutenant; and on the other side the appearance of General Porter impressed me very strongly as being a man who was capable of giving such support, and that he was desirous of giving it.

Q. You have witnessed other interviews between commanding generals and corps commanders, have you not?—A. I have.

Q. A good many of them?—A. A good many.

Q. Do you recollect a like impression being produced by any other corps commander towards a commanding general?—A. O, yes.

Q. Are they all equally impressed upon your recollection as this is?—A. No; I should say one or two were; but not as a general rule.

Q. How is it that, without hearing any of the language spoken, you meet a commanding general with one of his corps commanders, and you are so very strongly impressed with the fact that one is desirous to do what he is to be ordered to do, that you recollect it with such distinctness after this lapse of time?—A. You will recall that in my direct evidence I said that I could hear detached words. You are making your question not correspond with my testimony. I could hear, for instance, General Pope say, "Now, Porter, I want" so and so. I could hear the words, "Now, Porter, I want." I recollect to have heard that expression. The manner in which it was said, and the tone of voice, would convey to an old officer, or to a comparatively old officer, the idea of what seemed to be the relations between the two general officers.

Q. Did you hear any of the replies of the other party?—A. No. General Porter's tone was always much lower than General Pope's, and, although I could catch the tone of it, yet no word that I recollect.

Q. Then it was rather what General Pope said, that you could hear, than what General Porter said, that has led you to the conclusion that he somewhat relied upon General Porter?—A. Have I not answered the question?

Q. I think you have just answered it.—A. I don't recall whether I did hear any of General Porter's language or not. I recollect the gestures of inquiry, but I could only hear the tone. I do not recollect any words.

1101 Q. Was there anything that transpired which led you to look with a good deal of particularity at the interview between those two generals at that time, in order to impress itself upon your recollection?—A. Yes.

Q. Please state what it was that caused you to look with more than ordinary particularity at this interview.—A. I had just come from service in the West, where we had all been comparatively successful. I arrived at Centreville about ten o'clock on the night of the 30th, and saw the rout, or apparent rout—certainly a large number of routed people trying to get to the rear—there was a chain of sentinels on top of the hill at Centreville. I wanted to get to the front to join my corps, and I was not permitted. The orders were to permit nobody to go to the front or rear. Looking on for a little while, I finally got out of my conveyance, got a musket, and stepped into the ranks with the sentinels,

and I staid there until one o'clock. The general tone of what I saw was very disgusting, and a good deal annoying and worrying. The next morning was a very disagreeable morning, rainy and cloudy, and the whole army, as I saw it—or that portion which I did see—was very uncomfortable. They seemed discontented. They were sort of sullen, and I heard expressions that did not look to me like a brilliant success in the immediate future. I was worried and annoyed, and heard expressions from officers that I did not like.

Q. In what corps?—A. Not in General Porter's corps. I did not see his corps at all.

Q. In what corps did you hear these expressions?—A. I should dislike very much to answer that. I cannot see that it has any relation to this matter. It was not General Porter's.

The PRESIDENT OF THE BOARD. The Board does not want to interfere with the cross-examination of the Judge-Advocate if he thinks it important to develop these facts in regard to other corps.

The WITNESS. I should say that I heard expressions of discontent and disagreeable expressions, to the patriot, in portions of the Sixth Corps. I was in the Third Corps. I saw some officers of, I believe, the Eleventh and Twelfth Corps, a German corps, and it was all unpleasant. Recalling this thing when I was at headquarters, it was a matter for me to look very closely and see if I saw anything beyond what I had already seen.

Q. Had those expressions that you speak of, any of them, any reference to the petitioner?—A. Not the slightest.

By Mr. CHOATE:

Q. Did anything occur shortly after that day that aided in impressing this interview upon your memory—shortly after the 31st of August, or 2d of September?—A. Yes.

Q. What were they?—A. If I am not mistaken, General Porter's corps brought up the rear of the army as we moved from Fairfax Court-House to Washington.

The RECORDER. What is the object of that?

Mr. CHOATE. To see how this remarkably vivid impression was made upon his mind.

The RECORDER. That is for me to do on cross-examination.

Mr. CHOATE. Suppose this officer happened to hear a day or two afterwards that General Pope had made charges against General Porter; it may explain how it is.

1102 The RECORDER. I object to the question as being proper on cross-examination and not on direct examination.

The PRESIDENT OF THE BOARD. The objection will be noted.

The WITNESS. Finding that he had this position it served powerfully to confirm the original impression that I had received on my mind from the interview.

The RECORDER. What is that?

The WITNESS. Finding that he had the position of honor, the rear guard, it confirmed the impression produced upon my mind at the interview, that General Pope was relying upon him.

By the RECORDER:

Q. Do I understand you to say that the enemy were following you up vigorously?—A. That I don't know anything about.

Q. As a matter of fact, had not the enemy then begun its movement off in the direction of Harper's Ferry toward Maryland?—A. I think they had.

The RECORDER. So that there was not much post of honor in bringing up the rear guard?

The WITNESS. You asked me as to what other people knew—that he was assigned the post of honor.

The examination of this witness was here closed.

Mr. BULLITT said: We wish to offer in evidence the returns from the Adjutant-General's Office as to the force of Piatt's brigade; we have not it here, but we will hand it to the Recorder.

The PRESIDENT OF THE BOARD. Does it or not state the changes that had taken place during the preceding month?

The RECORDER. No, sir; it does not; but I will make no objection to its being put in evidence.

The Board then took a recess.

Upon reassembling, the Board adjourned at two o'clock and fifteen minutes until to-morrow morning at ten o'clock.

THIRTY-FIFTH DAY.

GOVERNOR'S ISLAND, NEW YORK HARBOR,
October 29, 1878—10 a. m.

The board met pursuant to the foregoing orders and adjournment. Present, Major-General John M. Schofield, U. S. A., Brigadier-General A. H. Terry, U. S. A., Col. Geo. W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and Messrs. Bullitt and Maltby, of counsel.

The reading of the minutes of the previous session was omitted, with the consent of the petitioner.

The PRESIDENT OF THE BOARD said: It will be recollected that on the 17th of the present month a motion was made by the petitioner's counsel requesting the board to summon General Pope as a witness for the United States. The question was fully argued on both sides by the petitioner's counsel and by the Recorder; and upon the hearing of the question the Board decided for the present to send by telegraph
1103 to General Pope a request to appear, basing that request upon the ground stated by the counsel, of their belief that his presence was necessary in the interest of justice to their client.

On the following day this dispatch was also sent to General Pope in reference to the same subject:

WEST POINT, NEW YORK, *October* 18, 1878.

Gen'l JOHN POPE, *Fort Leavenworth, Kansas:*

The Board has adjourned to meet on Thursday next, the 24th, when we expect to hear your testimony in the Porter case. Please bring with you your despatch-books and those of your staff-officers, if possible, and all despatches received from Porter during the period of operations under investigation.

J. M. SCHOFIELD,
Major-General.

This request was made at the request of the counsel for the petitioner.

On the same day General Pope acknowledged the receipt of the dispatch of the 17th, and the dispatch just read, as follows:

LEAVENWORTH, *October* 18, 1878.

To Gen'l J. M. SCHOFIELD: Your despatches of seventeenth and eighteenth received.

JOHN POPE,
Bvt. Maj. Gen'l, U. S. A.

On the 21st of October, having taken from the 17th to the 21st to consider the question, General Pope telegraphs me at West Point, as follows:

FORT LEAVENWORTH, KANSAS, *October* 21, 1878.

Gen'l J. M. SCHOFIELD, *U. S. Army:*

I transmit a telegram in answer to yours of seventeenth. I presume it will occasion no delay, as I could not leave here for two or three days on account of important public business relating to Indian affairs, so that I could not reach N. Y. before Saturday night in any case.

JOHN POPE,
Bvt. Maj. Gen'l, U. S. A.

This is the dispatch transmitted:

FORT LEAVENWORTH, KANS., *October* 21*st*, 1878.

To Gen'l J. M. SCHOFIELD, *West Point. N. Y.:*

I have received your despatch of the seventeenth, in which you state that "in view of the fact that the counsel for the petitioner have stated that they believe that justice to their client requires your presence here, the board requests that you appear as a witness before them at Governor's Island, next Thursday, twenty-fourth inst." In reply I have to say that if the petitioner considers my presence as a witness necessary he should apply to have me subpœnaed as a witness for him. Only as a witness for him or for the government can I be expected with any semblance of legality to appear as a witness in the case. To do so on a mere request of the Board would be to place myself in a position not only false, but in every respect extraordinary and unknown to the laws of or to the practice of the civil and military tribunals of the country.

While I stand ready to appear before your Board in any position known to law or practice, I cannot appear as a volunteer witness in the case on mere request, and without knowledge whether I am called for the government or the petitioner. As you state that I am requested to appear as a witness because of the statement or suggestion of the petitioner, it is to be inferred that I am called as a witness for him; but this fact is not definitely stated, nor does your telegram convey a subpœna, but only a request. To a subpœna, regularly issued, to appear as a witness for either side, I will cheerfully and promptly respond. I am entirely willing to appear as a witness in the case, and desire simply to be placed in the same relation to the Board and the parties in controversy as that occupied by all the other witnesses.

JNO. POPE,
Brig. Gen'l, U. S. A.

1104 To these two dispatches these answers were sent:

WEST POINT, NEW YORK, *October* 21, 1878.

General JOHN POPE, *Fort Leavenworth, Kansas:*

In accordance with the suggestion contained in your despatches of this date, I send you a formal subpœna to appear as a witness for the United States in the Porter case. Please inform me on what day you will arrive, so that I may adjourn the Board to that day. The meeting for Thursday was appointed to hear your testimony, and we can go no further with the case until you are heard.

J. M. SCHOFIELD,
Major-General, U. S. A.

WEST POINT, NEW YORK, *October* 21, 1878.

Gen'l JOHN POPE, U. S. A., *Fort Leavenworth, Kansas:*

You are hereby required, on behalf of the United States, to appear before the Board of officers appointed by the President to examine the evidence in the case of Fitz-John Porter, late major-general of volunteers, at Governor's Island, New York Harbor, on Thursday, the twenty-fourth of October instant, or as soon thereafter as practicable, to give evidence in said case.

J. M. SCHOFIELD,
Major-General, U. S. A., President of Board.

On the 23d of October, having no answer from General Pope, I telegraphed him as follows:

WEST POINT, NEW YORK, *October* 23, 1878.

General JOHN POPE, *Fort Leavenworth, Kansas:*

If you can inform me to-day when you will appear before the board it will save us an unnecessary meeting to-morrow. Please answer.

J. M. SCHOFIELD,
Major-General.

On the following day this dispatch was received in reply:

FORT LEAVENWORTH, KANSAS, *October* 24, 1878.

Gen'l J. M. SCHOFIELD, *West Point, N. Y.:*

Your despatch of yesterday is just received. I have received instructions from the Secretary of War to remain here until further advices are sent me. As soon as received from the War Department I will telegraph you.

I presume yesterday's storm prevented the transmission of your despatch, so that it was not received here until this morning.

JOHN POPE,
Bvt. Maj. Gen'l, U. S. A.

The same day, the 24th, a dispatch was received from the Secretary of War; it was replied to by me that day from West Point, briefly, which occasioned the secret session on the following day, at the Sturtevant House; at which time a formal response was made to the dispatch from the Secretary of War, of a confidential character, not proper to be made public at this time, but in that report to the Secretary of War were embraced the views of the petitioner's counsel as expressed upon their motion here, in respect to the appearance of General Pope as a witness, the replies of the Recorder thereto, and, in addition, the views of the Board upon that question as based upon the present aspect of the case. In consequence of that correspondence this telegram was sent by the Secretary of War to General Pope:

WAR DEPARTMENT, *October* 27, 1878.

To Gen. JOHN POPE, *Fort Leavenworth, Kansas:*

After full consideration the President declines to order you either to appear
1105 or not to appear as a witness before the Advisory Board in the case of Fitz-John Porter; and says you will determine for yourself what action to take, and advise General Schofield promptly by telegraph of your decision.

GEO. W. McCRARY,
Secretary of War.

I have received no response to this dispatch from General Pope. But the Recorder has just now handed to me one from General Pope to him on that subject. I am informed that, some days ago, a dispatch was also received from General Pope, and read here in public, embracing the first part of this correspondence which I have just read, but not the second. Of course we do not know what confidential relation may exist between General Pope and the Recorder, which may have justified him in furnishing the Recorder with copies of the correspondence between the Board, through its president, and General Pope; therefore no opinions are to be expressed now on that subject. But the reading of that correspondence in public, whether before the Board or not, without the knowledge of the Board, was of course inadmissible; and the reading of any communication of an official character, when the Board was not present for the transaction of business, there being only one member present, was of course unauthorized and improper; and so much of that day's record as relates to that subject will of course be stricken out. The Judge-Advocate is now at liberty to read the communication received from General Pope if he pleases to do so.

The RECORDER. Before I do so, the remarks which the president has made make it necessary that I should explain.

The PRESIDENT OF THE BOARD. Whatever reply the Recorder has to make, may be submitted in writing to the Board, and will be considered by them.

The RECORDER. This is an open Board, and my reply should be made here in response to the remarks which the president has made, in which my action is spoken of as unauthorized and inadmissible and improper.

The PRESIDENT OF THE BOARD. The reply of the Recorder may only be given in writing.

The RECORDER. What I have done as Recorder has been in the open Board and in a respectful and courteous manner. I have never at any time done differently. This has been an open Board. I have treated the president and each member with the greatest respect. In the whole course of my military service up to this time I have never had any criticism made upon the manner in which I conducted my public business. I protest against this attempt to characterize my action as improper, and I shall take the liberty of bringing it to the notice of the President of the United States directly.

The PESIDENT OF THE BOARD. It will, of course, come to the notice of the President. We have no objection to the Recorder making his protest against this mode of treating the subject. That must end whatever explanation he may have to make as between him and the Board.

The RECORDER. The president was not present during that day.

The PRESIDENT OF THE BOARD. I have official information of what transpired. The Recorder will please understand, now that he has undertaken to enter his protest, that no further discussion can be had. He may submit in writing whatever he may have to say on the subject; that will be considered by the Board, and it will then be determined whether it shall be published as a part of the record of the Board, or what other consideration shall be given to it.

The RECORDER. I wish to know whether that is the opinion of the President of the Board—that criticism which is attempted to be
1106 made upon my performance of my official duty, which I have endeavored to discharge respectfully and courteously—or whether it is the opinion of the full Board.

The PRESIDENT OF THE BOARD. That is not a pertinent question.

The RECORDER. It is. And I desire to know whether that is the opinion of the Board or the opinion of the president alone.

The room was then cleared.

Upon the doors being reopened—

The RECORDER said: After a free consultation with the members of the Board, I think that I am better informed of the situation in this matter. I was not aware that a subpœna had been sent by the President of the Board to General Pope from West Point, or that the Board had transacted business relative to this matter informally, in private session, or that those communications had passed which have just been read here this morning by the president. Last Thurday, when but one member of the Board was present and an adjournment w s about to be had, I received a telegraphic communication from General Pope that I presumed was for the official record, as it was addressed to me officially as Recorder. I presented it for file and future action when a full Board should be present, because I knew that the counsel for the petitioner, and the petitioner himself, and others were desirous of knowing what response, if any, had been received from General Pope. But that communication was evidently sent to me, as I am now inclined to believe, for my individual information, and should not, I think, have gone on the record at that time. But at that time it did not so occur to me, because I was not aware what the court had done in its private session. Therefore I think that the proper course would have been for me to retain it until the full Board was present, because it was a reply from General Pope to the President of the Board, sent to me for my information. While I am always ready to stand up for my individual rights when I think they are infringed upon, yet I always feel it my duty to acknowl-

edge, when I have done anything hastily, however good my motives might have been, that probably on more mature reflection I would have done differently. I ought to add that this was addressed to me officially as Recorder. If it had been sent to me in my individual capacity I should have considered it of a different character.

The PRESIDENT OF THE BOARD. Of course the President of the Board takes great pleasure in assuring the Recorder as well as all present that he had no thought of impugning the motives of the Recorder in the act which was disapproved by the Board, but simply to express the disapprobation of the Board with that proceeding, and to cause the record to be properly corrected.

The Recorder may now read, if he pleases, the dispatch which he received this morning from General Pope.

The RECORDER. It is dated "Fort Leavenworth, Kansas, October 29," and is addressed

To MAJOR A. B. GARDNER,
Recorder and Counsel for Government, Governor's Island, New York:

I am informed by the Secretary of War in telegram of this date, that the President declines to order me to appear or not to appear before your Board as witness, but leaves the matter to my discretion. In view of this fact and of the telegraphic instructions of the Secretary of War for the guidance of the Board, copy of which the Secretary has sent, I must adhere to the position taken in my telegram of 21st instant to General Schofield. Nevertheless, although the counsel for the government refuses to subpœna me as witness for the government, and the petitioner declines to subpœna me as a witness for him, and therefore I am subpœnaed by neither party, if the
1107 Board require any information in my power to give on any points brought out in this investigation, I will cheerfully give it either by sworn replies to written interrogatories, or if the Board deem it necessary by appearing in person before it for this purpose, on due notification to that effect.

JOHN POPE,
Brevet Major-General, U. S. A.

The PRESIDENT OF THE BOARD. We will hear any remarks that the counsel for the petitioner may have to make, or the views they may have to express on the subject.

Mr. BULLITT. We have already given our reasons to the Board for believing that the cause of truth in the investigation before the Board rendered it important that General Pope should be before them. I do not know that we can add anything to those reasons. The whole course of this investigation makes that so manifest that it is almost impossible for us to add anything to it, and I would not propose now to go into those reasons with any degree of detail. The Board, as I understand it, acting upon the suggestion which was made by the counsel for the petitioner, did request General Pope to attend; they requested him to attend under the suggestions which had been made, and as I understand the subpœna, it was issued in the name of the government; practically, however, as I suppose, still under the request which we made. Now, there is a position which we wish to take in this matter; we do not wish to be misunderstood as to that position. It is this: In the testimony given by General Pope before the court-martial, he expressed certain opinions—he gave certain testimony. That testimony and those opinions manifestly had a powerful influence with that court-martial in the conclusions at which it arrived. We believe that this Board must pay very great respect to the findings of that court-martial. We assume that you will do it; we assume, and have assumed from the beginning, that the laboring oar is upon us to demonstrate, and in the light of the facts as they are now made manifest before this Board, or shall be before you conclude your labors, we must demonstrate beyond the possibility

of doubt that the substantial facts upon which that court-martial rested for their conclusion were mistakes. We believe that we can demonstrate that. We believe that it is your duty, giving the highest respect to the finding of that court-martial to which it can be entitled, still to find that they were in error at that time, owing to the errors or mistakes which they made in the conclusions which they drew from the facts as established before them; that is, that the facts upon which they relied and upon which the Judge Advocate gave his opinion to the President, and upon which the President affirmed that sentence—the substantial facts from beginning to end, as then supposed, were mistakes. Now, in order that you may have the opportunity of understanding those facts, understanding that which operated upon the minds of that court-martial, that as far as can be you may be placed in the position in which they were placed, and that you may have all the benefit of the light which we have been able to throw upon that state of things by the testimony which has been adduced in addition to that which was before that court-martial, we have endeavored to bring before you every officer of that army, and every officer of the Confederate Army that we supposed would enable you better to understand the true condition of those matters. Here is the chief actor; here is the man who was the head of the army, and who was then the commanding officer over General Porter. Necessarily, his opinion in reference to General Porter's conduct at that time must have had weight superior to that of any other witness who was before that court-martial. We have endeavored to demonstrate that before you,
and we have certainly brought before you credible witnesses to
1108 show that the opinions formed by General Pope at that time, and
expressed by him at that time, were to as great extent misapprehensions upon his part as probably ever existed in reference to any important transaction. We suppose that if General Pope has that character which ought to belong to an officer having reached the position which he has reached, that when we bring before his mind the facts as they now stand before this Board, that the opinion which he then expressed, and which must have had the influence to which I have referred, that his opinions must be modified to a very considerable extent; or, if not modified, and if, on the other hand, he still adheres to the views he then expressed, it will enable this Board the more correctly to determine the value or the weight that should be given to the opinions which he then expressed. Under these circumstances, hoping that he would have attended before, we felt that it was our duty to ask this Board to request him to be present. The reasons which operated then, operate as powerfully with us to-day as at that time. If it will relieve the case of any difficulty, we will put it in a position which practically it occupies at any rate, and that is this: You are continuing an investigation practically which took place sixteen years ago. Important witnesses gave their testimony at that time. In an ordinary case in a civil tribunal, the court has the right at any time to allow a witness to be called back for cross examination. You followed that practice in the case of Captain Pope. Now we ask the same rule to be applied in this case—that General Pope shall be called here for the purpose of enabling you to arrive at the truth; that in being called back he shall be in the position of being asked questions which we may address to him as to the testimony which he gave before in the light of the facts as they have since been developed, or in the light, further than that, of his own official declarations to the government with reference to these transactions. You have before you a very large amount of documentary evidence coming from General Pope himself. We cannot properly offer

that before you, or cannot have the proper explanations of that documentary evidence given, without having him here for the purpose of cross-examining him in reference to it. With all the urgency we can throw into the subject, we will still insist that whatever means can be applied to obtain his presence shall be so applied by the Board; or, if we can, in any way, put the matter properly in a form in which the Board thinks it should be put, that we are ready to do. We supposed that letting him understand, and putting it upon the ground that he was coming at our request, that we put it in a form that would probably meet the views of all parties. We are perfectly willing to do that. We still do urge and insist, as far as we have the right to do it, as far as circumstances give us that right, we urge and insist that he be induced to come if there is any means within the power of the Board to have him appear.

The RECORDER said: I think, Mr. President and gentlemen of the Board, that the counsel for the petitioner argues this question on wrong premises. Most of the military witnesses of any rank were asked their opinions; but whether the original court-martial gave any weight to those opinions we cannot tell. They may not have considered General Pope's opinion at all in the matters; that about which his opinion was asked was the 4.30 p. m. order. General Porter was tried on other charges. He was tried for not coming up on the 27th of August when he was ordered to move peremptorily at a certain time. In addition to that he was tried for not moving into action, knowing a battle to be raging. It was wholly immaterial whether his front was opposed to the immediate command of Jackson or of Longstreet. Therefore, as
1109 to General Pope's opinion, not knowing whether the original court gave it any weight or not, it should be considered that the court itself was a court of experts, and that it was hardly proper to have asked General Pope's opinion, or the opinion of any of these military men, under the circumstances. They should have been asked to testify merely as to the facts; for the court itself could form an opinion, they being military men and experts. There was a careful examination of General Pope, and a long and careful cross-examination. The petitioner assumes that then he knew what was in his front, and made his defence on that theory. General Pope could have been asked any supposititious questions, and if he came here to-day the questions put to him would necessarily be supposititious. It seems to me that the members of this Board, on the facts adduced, are as capable of forming an opinion as any other body of officers in the service. As to the substantial facts, I think and shall maintain, that the evidence produced by the government has shown substantially the same facts to exist as were presented on the original trial. If anything, they have brought out stronger and made more clear, that that conclusion which the original court came to was a correct conclusion. General Pope was not a witness to any of the movements of the petitioner on that day. Had he been on either of those days, the 27th or 29th of August, I would have summoned him as quickly as I did General McDowell. But as he was not, and as his testimony was merely of a general character, and as his cross-examination was very minute and particular, I did not think it necessary to summon him. There is more than one way of calling him; first, for the petitioner to call him if he thinks that General Pope is going to be of service to him as a witness, and that his opinion will be of any value; then, of course, if they summon him, he will be summoned for the petitioner. I have said why I did not summon him. If the Board of its own volition finds anything which they think General Pope can enlighten them upon by

reason of answering any question which they might ask, I think that the Board could summon him for themselves. But the Board, I presume, do not desire to summon him for the United States, as they have put upon me the duty of summoning witnesses for the government.

Mr. BULLITT. I was looking to find what I think the Board will recollect was stated by General Pope—and I think the Judge-Advocate will corroborate me. I have it before me, on page 34 of the original record:

> I did not then believe, nor do I now believe, that at that time any considerable portion of Longstreet's corps had reached the vicinity of the field.

Then, if I recollect correctly, he says in another place that he supposed that the forces in front of General Porter were a portion of General Jackson's forces. I think I am right in that; am I not?

The RECORDER. I think so, substantially.

Mr. BULLITT. I think those two statements were made; one which I have just read, and the other, that in his opinion at that time there were none of Longstreet's forces there, but that those forces in front of Porter were Jackson's. Now that such testimony as that must have had influence with the court, and must have had influence with the Judge-Advocate in his opinion to the President, and must have had influence with the President in affirming the sentence, is a proposition so plain that I think it is hardly necessary for me to argue it. I suppose that it is fair, as I said before, to the cause of truth, fair to the petitioner, fair to this Board, that they should have whatever light General Pope can throw upon these questions. I suppose when he comes here
the proper position for him to occupy will be that of a witness who
1110 has been called by the government, and who was called back
again to enable us to cross-examine him. That is the position in which we wish to be put in this case.

Mr. MALTBY. What he did say, as I recollect, is, that at that time none of Longstreet's forces, as far as he was aware, had arrived there, and that he did hear later in the evening that some of Longstreet's forces were there.

Mr. BULLITT. It is on page 35:

> I do not know whether at 5.30 p. m., or between that hour and 7 o'clock, the accused had the enemy in his front, except from the reports of others; though I would think it altogether likely that Jackson would have pushed out some force to observe the road between Gainesville and Manassas Junction. It is altogether likely therefore that some of Jackson's troops were in the presence of General Porter's advance, though of my own knowledge I do not know that.

The RECORDER. If, as the petitioner says, and if, as it is insisted here, he did not get the order until it was too late to execute it, what is the use of asking anybody's opinion about it?

Mr. BULLITT. The Recorder forgets that the charge against General Porter was not merely disobedience of the 4.30 p. m. order, but that it was that he lay from twelve o'clock until dark without attacking the enemy; and that his duty was to attack the enemy whether he got the 4.30 p. m. order or not. Therefore, it is not a question merely as to the 4.30 p. m. order, but it is with reference to the charges to which I refer, and of which he was found guilty, which related to his duty independent of the 4.30 p. m. order entirely.

The PRESIDENT OF THE BOARD said: The views of both sides having been presented, the Board will be cleared for the consideration of the question.

The room was then cleared for deliberation. Upon the doors being reopened,

The PRESIDENT OF THE BOARD said: After full consideration the Board have come to the following conclusion: In view of the fact that General Pope, under the discretion given him by the decision of the President, still maintains his right to decline to be cross-examined upon his previous testimony and consents only to come for the purpose of giving information which may be required by the Board upon any points brought out in this investigation, and as his presence here could be of no service to the Board and only a waste of time to bring him here under those conditions, and as the Board has exhausted its powers to compel his attendance as a witness without conditions, they therefore think it inexpedient to take any further action in the matter.

Mr. BULLITT said: Then the Board will be so kind as to oblige us by allowing time enough to reflect upon the documentary evidence which we may wish to offer in view of the absence of General Pope. There is quite an amount of documentary evidence which we had supposed would be properly admissible if General Pope were here to be cross-examined in reference to it. In his absence we should feel bound to offer that evidence; whether the Board will feel that it is proper for them to receive it is another question. There is some doubt in my mind as to whether it is admissible unless we have General Pope here to cross-examine him in connection with it. But while I have that *doubt*, I still feel that it is due to the Board as well as to our own cause that we should at least submit the offer for the ruling of the Board, and for them to determine whether it is admissible or not. And we should like a little time for the purpose of considering what portion of that proof we shall offer.

The RECORDER. I would like the Board to propound the ques-
1111 tion, if it will, as to whether the so-called documentary evidence is of a date subsequent to the alleged transactions upon which the petitioner was tried or prior thereto.

Mr. BULLITT. I believe the whole of it is subsequent.

The RECORDER. It seems to me, then, that there is no necessity for time to consider; that it is absolutely inadmissible. Whatever may have transpired in the way of documents written, printed, or published by any one since the alleged fact would be entirely and clearly inadmissible here unless it was by the petitioner and an admission against himself.

Mr. BULLITT. We are in this extraordinary position, and I think the Board will see the force of it when I state the proposition: A gentleman has been called before the court-martial who has testified to a certain state of facts. Now, prior to the time at which he gave that testimony, and subsequent to the time at which he gave that testimony, in the most formal manner, in declarations made to the government of which he was an officer, in reference to the transactions concerning this issue, he has made statements which we shall contend are diametrically opposed to the testimony which he gave before that court-martial. Now, I expressed a doubt whether this Board would feel when we offered that documentary evidence that it was admissible. It is a question with me whether it is or not. My own judgment is that under the peculiar circumstances of this case it becomes admissible. In the first place, so far as the reports made by General Pope to the government with reference to these transactions are concerned, I suppose that they become testimony as a part of this case, for, as I understand it, everything which comes from the War Department in reference to this transaction in the shape of reports is in evidence before this Board, and may be considered by them. So far as documentary evidence is concerned which does not come from the War Department, there the question is a

doubtful one; and that is the class of documentary evidence to which I referred when I said a moment ago that its admissibility might be doubtful. But this Board will observe that we are in the position of having a witness who, as I said before, and repeat (and I am sure that the Board will feel that in making that statement I am not only sincere, but that the facts will bear me out in it)—a witness who was the most important of all witnesses, because no man can have heard this case without knowing that General Pope was the important witness in this whole transaction—we are in the position of having that important witness having, as we shall allege, and as we shall offer to prove before you, issuing documentary evidence which shows that he was utterly mistaken in the statements which he had made before that court-martial, and if he were on the witness-stand we should most confidently rely upon making him either place himself in such a position that he would be obliged to admit that he had fallen into those errors or mistakes, or be placed in that other position that his own declarations would show that not one word which he uttered was to be relied upon. Now, we are unable to obtain him; he stands in Leavenworth, a thousand miles beyond the reach, apparently, of any power to bring him here before this Board; he chooses to place himself in the position of a man who once has sought the condemnation of an officer under him, and who, when that officer is seeking again to have justice done him, is not willing to meet that issue. That is the attitude; that is the position in which he places himself; and now it is beyond the power of this petitioner to bring him forward for the purpose of coercing that justice which he has been seeking for sixteen years. Under these circum-
1112 stances we feel that this Board may very properly apply rules with reference to the evidence which do not ordinarily pertain to the rules which, if I am not mistaken, will be found to meet exigencies of just this character. It is a familiar rule of evidence, or was until within a few years, that no man could be a witness in his own case. Yet where a suit was brought for the contents of baggage, from the very exigencies of the case, and before parties were admitted to be witnesses in their own behalf, the court laid down the rule of having once proved the loss of a piece of baggage or a trunk, that the owner could prove the contents. In other words, there is a reason, there is justice in the rules of evidence which enable courts to modify and apply those rules to suit exigencies. Now, what we shall ask this Board to do when we come to offer that documentary evidence is, so far as those documents are concerned, which have come from the War Department, to receive them as evidence just as you have received that which has been offered by the Recorder—I allude to the documentary evidence which he has offered in the shape of reports which have come from the War Department, documentary evidence from the Rebellion Record. Those we think are certainly pertinent. As to the others, the documentary evidence which we think we can establish has been issued by General Pope himself from time to time, we shall ask you to receive that evidence, because the only man by whom, perhaps, we could make it admissible is beyond your reach and beyond mine as I understand it, and beyond that of the petitioner. Under the circumstances, it does seem to me when we come to offer it that you will be obliged to receive it. I do not think that we ask anything unreasonable when we ask for time for the purpose of determining what evidence of this nature we may offer.

The RECORDER. Mr. President and gentlemen of the Board: Those reports that I have offered here in evidence were narrations of events as to matters about which there was no contradiction—official reports

made by sworn public officers in the line of their public duty, as to events which transpired prior to and including, but not later than the alleged offenses and the time of their commission by the petitioner, not subsequent papers. An officer of the Army may write a communication to the War Department; he may write a series of communications on all subjects, but they are not what are termed official reports, nor are they admissible before courts of inquiry, even; because they are not documents which he is required to make by reason of his commission and oath as a sworn public officer of the government in the line of his duty. Therefore no matter what documents may be in the War Department, or outside of the War Department, of those who are witnesses, or of those who have not been witnesses, as to the case of the petitioner, those documents are not admissible here, because they are not of the character of official reports made in reference to transactions and at the time of the alleged offenses of which this petitioner was convicted. As to General Pope, it has appeared here in evidence by one of the witnesses that he did desire that the petitioner should have a tribunal of some description for the rehearing of this case; and he has certainly offered to come here either as a witness for petitioner, or for the government, or for the board, if they choose to call him. That is so much a matter of record that it is hardly necessary to state it. I merely remark this in denial of the suggestion that General Pope is unwilling to meet any issue. I desire to say further that any one who has been so unfortunate as to have been a witness in the original trial is not to be dragged here by the petitioner for the purpose of discrediting his testimony on a so-called "cross-examination" where they have no opportunity of defending themselves. That is the object now avowed by the petitioner's counsel, and one which I have foreseen.

1113

The counsel says the Board may apply rules to the evidence which do not ordinarily pertain. Have not the Board, time and again since they began this case, seen the counsel apply the very strictest rules of evidence of common law in criminal cases to me in the matter of the production of evidence and insist that those rules should govern? And now they turn around and say that any rules that the Board may choose to adopt shall apply and be used. This so-called documentary evidence appears to be a matter subsequent entirely to the time of the original investigation. The gentlemen have put themselves upon record in general terms as to what it is. I do not think that the Board should give them any further time. Let us now come to a conclusion.

Mr. BULLITT. All we want is opportunity to consult with our colleague, Mr. Choate, who is not here to-day.

The PRESIDENT OF THE BOARD. What time is required?

Mr. BULLITT. I think we will be able to go on to-morrow morning, and in the mean time determine what we shall desire to offer.

The Board then, at 2.38, adjourned until to-morrow morning at 10 o'clock.

THIRTY-SIXTH DAY.

GOVERNOR'S ISLAND, NEW YORK HARBOR,
October 30, 1878—10. a. m.

The Board met pursuant to the foregoing orders and adjournment. Present, Maj. Gen. John M. Schofield, U. S. A., Brig. Gen. A. H. Terry, U. S. A., Col. George W. Getty, U. S. A., and the Recorder;

also, Fitz-John Porter, the petitioner, and Messrs. Bullitt and Maltby, or counsel.

The RECORDER stated that he had received a dispatch from the witness Dobson, who stated that he was still sick, but would endeavor to come to New York by Thursday's train.

The RECORDER also stated that he had received information of a witness in Philadelphia whom he might desire to examine.

Counsel for the petitioner consented to the examination of these witnesses by prepared interrogatories or orally by appointment.

Mr. BULLITT then said: With the permission of the Board, I would like to call attention to what occurred yesterday with reference to the position of General Pope.

Upon looking over General Pope's dispatch of the 29th, submitted by the Judge-Advocate yesterday, it appears to us that some misapprehension may exist as to the position of General Pope. With the permission of the Board, I wish to state our understanding of the matter, that we may be corrected if we are in errror as to it.

On the 17th of October we requested the Board to take steps to procure the attendance of General Pope as a witness.

The Board, through its president, sent a dispatch to General Pope, stating that he was requested to appear at the instance of the petitioner's counsel, and on the next day, also, another dispatch asking him to bring with him his dispatch-books, and also all dispatches received by him from General Porter on the days involved in this investigation.

To that General Pope replied in substance, that as he was not subpœnaed on behalf of the government or of the petitioner, he was
1114 unwilling to appear; that if he did so he would be a volunteer. This position he was not willing to occupy. The Board, through its president, then sent him a subpœna in the name of the government.

That, of course, was the only way in which a subpœna could be issued to him.

The subpœna of the Board to General Pope was accompanied by a dispatch from the President of the Board stating that it was issued in accordance with his suggestion, he having expressed perfect willingness to appear if subpœnaed either for the government or for the petitioner.

After still further delay, General Pope sends the dispatch of the 29th. In this he makes no allusion to the subpœna sent him, but says that, as the Secretary of War informs him, the President leaves it to his discretion to appear or not, as he may see fit, and as the government refuses to subpœna him on its behalf, and the petitioner refuses to subpœna him as his witness, he adheres to the position taken in his telegram of the 21st; that is, he declines to attend. Nevertheless, he will give information to the Board, if required, upon written interrogatories addressed to him, or, if the Board deem it necessary, by appearing before it for that purpose, upon due notification to that effect.

The construction which we put upon this telegram of the 29th is that General Pope declines to appear as requested to do by the Board, at our instance, and submit to a cross-examination by us. We could not, of course, place ourselves in the position of calling General Pope as our witness. Our purpose was cross-examination. We had hoped he would come forward in reply to the request of the Board, or at any rate in compliance with the subpœna; but he ignores the subpœna and declines to come.

His offer to give information to the Board, as stated in his dispatch, when taken in connection with his previous declarations, involves the condition that he would not appear for cross-examination. We so un-

derstand, and assume that to be the interpretation put upon it by the Board.

We also understand that the declination of the Board to take further action is based upon the fact that they have exhausted their powers in the effort to procure General Pope's attendance for cross-examination by the petitioner's counsel.

If we are in error in that we would like very much to be corrected, because we shall assume in our future argument that that is the phase of the case at present. We desire to make sure that we shall not hereafter misunderstand the exact position.

The PRESIDENT OF THE BOARD. The Board will consider the matter carefully, and also what the Recorder has to state, if he desires to say anything.

The RECORDER. No, sir; everything there explains itself, it seems to me, very fully.

Mr. BULLITT. Will the president give us the exact language?

The PRESIDENT OF THE BOARD. The subpœna of the Board to General Pope was accompanied by a dispatch from the President of the Board stating that it was issued in accordance with his suggestion; he having expressed a perfect willingness to appear if subpœnaed, either for the government or for the petitioner.

Mr. BULLITT. We will now offer in evidence the report made by General Pope to the War Department on the 3d of September, 1862. We have the copy, certified from the War Department, which we now present.

1115 The document is as follows:

[Indorsement:] Report of Major-General Pope, com'd'g Army of Virginia. Operations of the Army of Virginia from Aug. 9th till Sept'r 2d, 1862. Received at headquarters of the Army September 6, 1862. War Department, Adjutant-General's Office, Washington, September 30th, 1878. Official copy: E. D. Townsend, Adjutant-General.

HEADQUARTERS ARMY OF VIRGINIA,
September 3rd, 1862.

GENERAL: I have the honor to submit the following brief sketch of the operations of this army since the 9th of August.

I moved from Sperryville, Little Washington & Warrenton, with the corps of Banks & Sigel & one division of McDowell's corps, numbering in all thirty-two thousand men, to meet the enemy who had crossed the Rapidan and was advancing on Culpeper.

The movement toward Gordonsville had completely succeeded in drawing off a large force from Richmond, and in relieving the Army of the Potomac from much of the danger which threatened its withdrawal from the Peninsula.

The action of Aug. 9, at Cedar Mountain, with the forces under Jackson, which compelled his retreat across the Rapidan, made necessary still further reinforcements of the enemy from Richmond; and by this time it being apparent that the Army of the Potomac was evacuating the Peninsula, the whole force of the enemy concentrated around Richmond was pushed forward with great rapidity to crush the Army of Virginia before the forces evacuating the Peninsula could be united with it. I remained at Cedar Mountain, and still threatened to cross the Rapidan until the 17th of August, by which time Gen'l Robert Lee had assembled in my front, and within eight miles, nearly the whole of the rebel army.

As soon as I ascertained this fact & knew that the Army of the Potomac was no longer in danger, I drew back my whole force across the Rappahannock on the night of the 17th and day of the 18th, without loss of any kind, and one day in advance of Lee's proposed movement against me. The enemy immediately appeared in my front at Rappahannock Station and attempted to pass the river at that bridge and the numerous fords above & below, but without success.

The line of the Upper Rappahannock, which I had been ordered to hold that the enemy might be delayed long enough in his advance upon Washington to enable the forces from the Peninsula to land & effect a junction with me, was very weak, as it could be crossed at almost any point above the railroad bridge by good fords.

By constant vigilance & activity, and much severe fighting for three days, the enemy

was gradually forced around from the railroad crossing to Waterloo Bridge, west of Warrenton.

Meantime my force had been much diminished by actual loss in battle and by fatigue and exposure, so that although I had been joined by a detachment under Gen'l Reno and the other division of McDowell's corps, my force barely numbered forty thousand men. On the 22d a heavy rain fell, which rendered the fords of the river impassable for twenty-four hours. As soon as I discovered this, I concentrated my forces and marched rapidly upon Sulphur Springs and Waterloo Bridge to drive back the forces of the enemy which had succeeded in crossing at those points. This was successfully done and the bridges destroyed. I passed one day, or rather part of one, at Warrenton & beyond. The enemy still continued to move slowly around along the river, masking every ford with artillery and heavy forces of infantry, so that it was impossible for me to attack him even with the greatly inferior forces under my command, without passing the river over fords strongly guarded, in the face of very superior numbers.

The movement of Jackson toward White Plains, and in the direction of Thoroughfare Gap, while the main body of the enemy confronted me at Sulphur Springs and Waterloo Bridge, was well known to me; but I relied confidently upon the forces which I had been assured would be sent from Alexandria, and one strong division of which I had ordered to take post in the works at Manassas Junction. I was entirely under the belief that these would be there, and it was not until I found my communications intercepted that I was undeceived. I knew that this movement was no raid, and that it was made by not less than twenty-five thousand men under Jackson.

By this time the Army corps of Heintzelman, about ten thousand strong, had reached Warrenton Junction, one division of it, I think, on the very day of the raid. But they came without artillery, with only forty rounds of ammunition to the man, without wagons, and even the field and general officers without horses.

Fitz-John Porter also arrived at Bealeton Station near Rappahannock, with one of his divisions, 4,500 strong, whilst his other divisions were still at Barnett's and Kelly's Fords.

I directed that corps, about 8,500 strong, to concentrate immediately at Warrenton Junction, where Heintzelman already was. This was accomplished on the evening of the 26th. As soon as it became known to me that Jackson was on the railroad it became apparent that the Upper Rappahannock was no longer tenable. I could

1116 not detach a sufficient force to meet Jackson and at the same time attempt to confront the main body of the enemy. I accordingly at once evacuated Warrenton and Warrenton Junction, directing McDowell with his own corps and Sigel's, and the division of Reynolds, to march rapidly by the turnpike upon Gainesville, so as to intercept any reinforcements coming to Jackson through Thoroughfare Gap; and instructing Reno with his command, and Kearney with one division of Heintzelman's, to march on Greenwich so as to support McDowell, in case of necessity. With Hooker's division of Heintzelman's corps I moved back along the railroad upon Manassas Junction. Near Kettle Run, Hooker came upon the advance of Ewell's division in the afternoon of the 27th. A severe action took place which terminated at dark, Ewell being driven from the field with the loss of his camp, and three hundred killed and wounded. The unfortunate oversight of not bringing more than forty rounds of ammunition became at once alarming. At nightfall Hooker had but about five rounds to the man left. As soon as I learned this I sent back orders to Fitz-John Porter to march with his corps at one o'clock that night so as to be with Hooker at daylight in the morning. The distance was only nine miles, and he received the dispatch at 9.50 o'clock, but did not reach the ground until after ten o'clock next morning. He can probably explain better than I can the reason of this delay. Fortunately Hooker had handled the enemy so severely the evening before, and the movement of McDowell had begun to be so apparent, that the enemy, fearful of being surrounded, had retired precipitately from Manassas Junction, directing his retreat through Centreville, as McDowell, Reno, and Kearney had made the road through Gainesville impracticable. I immediately pushed forward to Manassas, and thence to Centreville, which was occupied by Kearney that night only a few hours after the enemy had left it.

Reno had reached Manassas Junction, and Fitz-John Porter was immediately ordered up from Broad Run, where he had stopped. McDowell's movement, conducted with vigor and speed, had been completely successful, the enemy being intercepted at Gainesville and part of his forces driven through Thoroughfare Gap. With King's division and Sigel's corps, McDowell continued his march along the turnpike toward Centreville, leaving Ricketts with his division in observation of Thoroughfare Gap.

Late in the evening of the 28th, McDowell's advance (Gibbon's brigade) met the force of Jackson retiring from Centreville and about six miles west of that place. A very sharp skirmish took place, ended by the darkness, in which the brigade of Gibbon behaved very handsomely, and suffered heavy loss. Sigel was close at hand with his corps, but did not join the action.

I instructed Kearney to move forward at early day-dawn, from Centreville toward

Gainesville, closely followed by Hooker and Reno, and engage the enemy thus placed between McDowell and Sigel, on the west, Heintzelman and Reno on the east, and Fitz-John Porter on the south. I also instructed F. J. Porter, with his own corps, and King's division of McDowell's corps, which had, for some reason, fallen back from the Warrenton turnpike toward Manassas Junction, to move at daylight in the morning upon Gainesville along the Manassas Gap R. R., until they communicated closely with the force under Heintzelman & Sigel, cautioning them not to go further than was necessary to effect this junction, as we might be obliged to retire behind Bull Run that night for subsistence, if nothing else. Heintzelman marched early from Centreville towards Gainesville closely followed by Reno. Meantime, shortly after daylight Sigel and Reynolds' division of McDowell's corps had become engaged with the enemy, who was brought to a stand, and he was soon joined by Heintzelman & Reno, and the whole line became actively engaged.

Porter marched as directed, followed by King's division, which was by this time joined by Ricketts' division, which had been forced back from Thoroughfare Gap by the heavy forces of the enemy advancing to support Jackson. As soon as I found that the enemy had been brought to a halt, and was being vigorously attacked along Warrenton turnpike, I sent orders to McDowell to advance rapidly on our left and attack the enemy on his flank, extending his right to meet Reynolds' left, and to Fitz-John Porter to keep his right well closed on McDowell's left, and to attack the enemy in flank and rear, while he was pushed in front. This would have made the line of battle of McDowell and Porter at right angles to that of the other forces engaged. The action raged furiously all day, McDowell, although previously in rear of Porter, bringing his whole corps on the field in the afternoon, and taking a conspicuous part in that day's operations. To my surprise and disappointment I received, late in the afternoon, from Porter, a note saying that his advance had met the enemy on the flank in some force, and that he was retiring upon Manassas Junction without attacking the enemy or coming to the assistance of our other forces, although they were engaged in a furious action only two miles distant, and in full hearing of him. A portion of his force fell back towards Manassas, and he remained, as he afterwards informed me, where he was, looking at the enemy during the whole of the afternoon of Friday, and part of Friday night, passing down in plain view to reinforce the troops under Jackson, without an effort to prevent it or assist us. One, at least, of his brigades, under General Griffin, got round
to Centreville, and remained there during the whole of next day's battle without
1117 coming on the field, though in full view of it, whilst General Griffin himself spent the day in making ill-natured strictures upon the general commanding (see paper marked D) the action in the presence of a promiscuous assemblage. Darkness closed the action on Friday, the enemy being driven back from his position by Heintzelman's corps & Reno, concluded by a furious attack along the turnpike by King's division of McDowell's corps, leaving his dead and wounded on the field. I do not hesitate to say that if the corps of Porter had attacked the enemy on the flank on the afternoon of Friday, as he had my written order (marked B) to do, we should have crushed Jackson before the forces under Lee could have reached him. Why he did not do so I cannot understand. Our men, much worn down by hard service and continuous fighting for many previous days, and very short of provisions, rested on their arms. Our horses had had no forage for two days. I had telegraphed and written urgently for rations and forage to be sent to us, but on Saturday morning, before the action was resumed, I received a letter (marked A) from General Franklin, written the day previous at Alexandria, stating to me that he had been directed by Gen'l McClellan to inform me that rations and forage for my command would be loaded into the cars & available wagons as soon as I would send a cavalry escort to Alexandria to bring them up. All hepe of being able to maintain my position, whether victorious or not, vanished with this letter. My cavalry was utterly broken down by long and constant service in the face of the enemy, and, bad as they were, could not be spared from the front, even if there had been time to go back thirty miles to Alexandria, and await the loading of trains. At the time this letter was written, Alexandria was swarming with troops, and my whole army interposed between that place and the enemy. I at once understood that we must, if possible, finish what we had to do that day, as night must see us behind Bull Run, if we wished to save men and animals from starvation.

On Friday night I sent a peremptory order (marked C) to Gen'l Porter to bring his command on the field and report to me in person within three hours after he received the order. A portion he brought up, but as I before stated one of his brigades remained the whole day at Centreville, and was not in the engagement. The enemy's heavy reinforcements having reached him on Friday afternoon and night he began to mass on his right for the purpose of crushing our left, and occupying the road to Centreville on our rear. His heaviest assault was made about five o'clock in the afternoon, when, after overwhelming Fitz-John Porter, and driving his force back on the centre and left, mass after mass of his forces were pushed against our left. A terrific contest with great slaughter was carried on for several hours, our men behaving with

firmness and gallantry, under the immediate command of Gen'l McDowell. When night closed our left had been forced back about half a mile, but still remained firm and unbroken, whilst our right held its ground. General Franklin with his corps arrived after dark at Centreville, six miles in our rear, while Sumner was four miles behind Franklin. I could possibly have brought up these corps in the morning in time to have renewed the action, but starvation stared both men and horses in the face, and broken and exhausted as they were, they were in no condition to bear hunger also. I accordingly retired to Centreville that night in perfect order.

Neither on Sunday nor on Monday did the enemy make any advance upon us. On Monday I sent to the army corps commanders for their effective strength, which, all told, including Sumner and Franklin, fell short of sixty thousand men. Instead of bringing up thirty thousand men, Franklin and Sumner united fell short of twenty thousand, and, these added to the force I had, already wearied and much cut up, did not give me the means to do anything else for a day or two than stand on the defense. The enemy during Monday again began to work slowly around to our right for the purpose of possessing Fairfax C. H., and thus turning our rear.

Couch's division and one brigade of Sumner's had been left there, and I sent over Hooker on Monday afternoon to take command and to post himself at or in front of Germantown; at the same time directing McDowell to take position along the turnpike from Centreville to Fairfax C. H., about two miles west of the latter place. Heintzelman was directed to post himself in rear and support of Reno, who was pushed north of the road at a point about two miles and a half east of Centreville, to cover the turnpike, it being my purpose in the course of the night to mass my command on the right, in the direction of Germantown, where I felt convinced the next attack of the enemy would be made. Late in the afternoon of Monday the enemy made his demonstration upon Germantown, but was met by Hooker at that place, and by Reno, reinforced by Kearney, further west. The battle was very severe though short, the enemy being driven back a mile with heavy loss, leaving his dead and wounded.

In this short action we lost two of our most valuable and distinguished officers, Gen'ls Kearney and Stevens.

By morning the whole of my command was massed behind Difficult Creek, between Flint Hill and the Warrenton turnpike, with the advance under Hooker in front of Germantown.

With the exception of Sumner, the commanders of the army corps of the
1118 Army of the Potomac had continued persistently to inform me that their commands were and had been demoralized ever since they left Harrison's Landing; that they had no spirit, and no disposition to fight.

This latter statement their conduct in the various actions fully contradicted; but the straggling in those corps was distressing.

The full facts having been reported to you, I received on Tuesday afternoon the order to retire to the intrenchments near Washington, which was accordingly done on that day and the next in good order, and without the slightest loss. Banks, who had been left with the railroad train, cut off at Bristoe by the burning of the bridge, was ordered to join me on Monday at Centreville, which he did on the afternoon of that day.

This brief summary will explain sufficiently in detail the whole of the operations of the forces under my command during sixteen days of continuous fighting by day and marching by night.

To confront a powerful enemy with greatly inferior forces, to fight him day by day, without losing your army, to delay and embarrass his movements, and to force him by persistent resistance to adopt long and circuitous routes to his destination, are the duties which have been imposed upon me.

They are of all military operations the most difficult and the most harassing, both to the commander and to his troops.

How far we have been successful, I leave to the judgment of my countrymen.

The Armies of Virginia and of the Potomac have been united in the presence and against the efforts of a wary and vigorous enemy, in greatly superior force to either, with no loss for which they did not exact full retribution. Among the officers whom I feel bound to mention with special gratitude for their most hearty, cordial, and untiring zeal and energy are Gen'ls McDowell, Banks, Reno, Heintzelman, Hooker, and Kearney, and many others of inferior rank, whom I shall take great satisfaction in bringing to the notice of the government.

The troops have exhibited wonderful patience and courage, and I cannot say too much for them. Our losses have been very heavy, but so far I have been unable to get accurate returns. I was informed by Gen'ls Kearney and Hooker, who examined the field of battle on Friday, that the enemy's dead and wounded were at least double our own.

I am, general, respectfully, your ob't serv't,

JNO. POPE,
Maj. Gen'l, Com'd'g.

Maj. Gen'l H. W. HALLECK,
Gen'l-in-Chief.

A.

To COMMANDING OFFICER *at Centreville:*

I have been instructed by General McClellan inform you that he will have all the available wagons at Alexandria loaded with rations for your troops, and all of the cars also, as soon as you will send in a cavalry escort to Alexandria as a guard to the trains.

Resp'y,

W. B. FRANKLIN,
Major-Gen'l, Comd. 6th Corps.

AUGUST 29, 1862—8 *p. m.*

Official copy.

C. A. MORGAN,
Col. and A. A. D. C.

B.

HEADQUARTERS ARMY OF VIRGINIA,
In the Field, Aug. 29, 4.30 *p. m.*, 1862.

Maj. Gen'l PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JNO. POPE,
Major-General, Commanding.

Official copy.

GEO. D. RUGGLES,
Colonel and Ch'f of Staff.

1119 C.

HEADQUARTERS ARMY OF VIRGINIA,
In the Field, near Bull Run, Aug. 29, 8.50 *p. m.*, 1862.

Maj. Gen'l F. J. PORTER.

GENERAL: Immediately upon receipt of this order—the precise hour of receiving which you will acknowledge—you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

JNO. POPE,
Maj. Gen'l Com'd'g.

Official copy:

GEO. D. RUGGLES,
Col. & Ch'f of Staff.

D.

BALL'S CROSS-ROADS, *Sept.* 3, 1862.

Was ordered to Centreville by Major-General Pope. On Saturday, Aug. 30th, General Griffin arrived there with his command at 11 o'clock, coming from the direction of Manassas Junction. He moved his brigade to the north of the town, halted it and came to General Pope's headquarters, where he remained one hour conversing with Lieut. Col. Myers and myself. During this conversation Lt. Col. Myers asked him several times why his (General Griffin's) brigade was not in the fight. General Griffin replied, "Never mind, I do not care." He said that he was tired of being commanded by staff-officers; asked "what Pope had ever done that he should be made a major-general"; also spoke disrespectful and sneeringly of other superior officers; said that he had heard that morning that General McClan was to take commgnd—hoped that it was true. He then rode off towards his command, and about two hours after sent an officer to ask whether he could get shoes for his men.

SPEED BUTLER,
Colonel & A. D. C.

Mr. BULLITT said: There are certain papers which we are informed have been sent to the Judge-Advocate, and which we would like now to call for with a view to offering them in evidence.

The first one which we ask the Judge-Advocate to produce is a document dated December 29, 1869, in which General Pope incloses the printed copy of the statement in the case of Fitz-John Porter. There are two inclosures in that document, as we are informed; and in connection with that a paper dated May 11, 1871, an indorsement, as we presume, in which the President refers to the printed statement of General Pope in the case of Fitz-John Porter; there are two inclosures, as we are informed, in that.

The RECORDER. These alleged documents, to which the petitioner's counsel have just referred, I presume are all of a date subsequent to the trial by court-martial of General Porter, and having refernce to matters subsequent.

Mr. BULLITT. I will go on with the list so that you may know what they are. I will give you the dates as I go along.

The RECORDER. We might as well settle it now without going through all the list—if they are all of a date subsequent to January, 1863.

Mr. BULLITT. We can describe them all.

The RECORDER. The two that have been described are sufficient.

The PRESIDENT OF THE BOARD. I think the date alone will not be sufficient to determine. I think we had better have the whole character of the papers stated.

The RECORDER. I had rather it should not go on the record, if the same principle is to govern it.

The PRESIDENT OF THE BOARD. We are not informed that they are of a similar character where the same principle would apply.

1120 The RECORDER. I would like to know if those alleged communications of General Pope are of a date subsequent to January, 1863?

Mr. BULLITT. I believe they are all.

The PRESIDENT OF THE BOARD. The Board are prepared to decide that that will not necessarily exclude them.

Mr. BULLITT. Shall I then continue with the list of papers which we called for?

The PRESIDENT OF THE BOARD. Yes.

Mr. BULLITT. Then I would call for the production of a paper dated December 6, 1869, General Pope's protest against the modification of the sentence of General Porter.

Also, a corrected copy of the statement in the case of General Porter, sent by General Pope to the War Department under date of December 11, 1869.

Again, a reply by General Pope to the War Department, in which he forwards a copy of the certificate referred to in his brief statement of the case of Fitz-John Porter, which is one of the documents we called for; that is under date of December 19, 1871.

Also, a paper which was sent to the War Department by General Pope, under date September 16, 1867. I hardly know how to designate that paper. It is a paper which refers to the efforts of General Porter to have a reopening of this case. It is dated at Atlanta, Georgia.

The ground upon which we ask for these papers is this: We have understood that all the papers on file in the War Department in reference to the case of General Porter, whether papers filed there preceding the trial by court-martial, or during the trial by court-martial, or subsequent to it, were practically referred to this Board for their exam-

ination at the time they were appointed to make this investigation; that that included papers in the War Department subsequent to the trial by court-martial as well as those prior to or during the court-martial. Those papers, as we understand, have been sent to the Recorder for use before this Board; and these papers which we are now asking him to produce before the Board we understand to have been referred by the War Department to the Board. We only wish that they shall be produced and laid before the Board for whatever use they may be hereafter in the course of the argument of this case. Of course I have no hesitation in stating, if desired, the use which we propose to make of them. It is for the purpose of showing contradictions existing in the testimony, chiefly of General Pope, of his own statements made by him, and made to the War Department with reference to this case, and filed in the War Department, for the purpose of affecting and influencing this case.

The RECORDER. I must characterize this request of the petitioner's counsel not only as extraordinary, but as unheard-of in a court of justice. We discussed yesterday the law governing the presentation of official reports somewhat. The petitioner's counsel have stated the purpose for which they desire these papers. First let me correct an error that, I think, he has fallen into with reference to the custody of these papers; that is, if they are in my custody, and, further, if there ever were any such papers. In the position in which the Board placed me in representing the government, the government being my client for this investigation, I have applied to the War Department for such information as they had, and such documents as they had that would be of service to me. Those documents, for aught I know, may have been of a confidential character, some of them; I am not positive as to that; but what the gentleman wants is something that is in violation of the ordinary
1121 rules of evidence. We know that this petitioner has been publishing communications and sending them to the public libraries, and doing that for a long series of years, reflecting upon the character and conduct of those who unfortunately came in contact with him in reference to his trial. Those communications are not evidence here except where, as an accused party, he may have made an admission of fact against himself bearing on the original charges.

That is under a well-settled rule of evidence. But what General Pope may have written, or what any one else may have written subsequent to the close of that case, although those documents may have gone into the War Department for filing, yet they are not documents which have been made by such persons, on the showing here, as sworn public officers in the discharge of their official duty under the law or regulations. The official report that was presented was a report made by General Pope, because the law and the regulations required him to make it as a sworn public commissioned officer. A letter that he may write that is not required in that way is not evidence.

If he, before he becomes a witness, or any man before he becomes a witness, makes statements out of court contrary to those that he makes in the evidence, those statements may be brought against him after cross-questioning him upon them. But what a man may have said subsequently, years after he has given his evidence—what he may have written subsequently thereto has no pertinency whatever, for the reason that we do not know the circumstances under which they were written; we do not know what was in his mind to cause him to write, or what new evidence may have been presented to him to change the view which he may have had. It seems to me that that which the gentleman

asks is plainly in violation of the ordinary rules of evidence, and that it does not require discussion from me. He cited a principle yesterday applicable to civil cases, not to rules of evidence in criminal cases, though we are governed, if we are governed at all, by rules of evidence in criminal cases.

The PRESIDENT OF THE BOARD. The Board would like to know whether the papers referred to as being in the possession of the Recorder were sent to him as the Recorder of the Board or sent to the Board at the time of the transmission of the record of the previous trial with other documents, or whether they were sent to him subsequently to the date when the Board imposed upon him the duty of representing the government?

The RECORDER. They were sent to me subsequently at my own personal request.

The PRESIDENT OF THE BOARD. In response to your request as the representative of the government?

The RECORDER. Yes, sir.

The PRESIDENT OF THE BOARD. The Board will then ask the Recorder to submit to the Board all such papers for examination, in order that they may decide any question as to their disposition—in secret session, of course. We do not refer to any confidential communication, but official documents bearing upon the case are, of course, proper to be considered by the Board in secret session. We are not prepared to judge absolutely as to the rejection or admission of such papers until we can see them.

The RECORDER. As the documents which were sent to me came in the way they did, I would like permission of the Board to apply to the Secretary of War to know if I can turn them over to the Board for such supervision and action as they may desire and deem proper.

1122 The PRESIDENT OF THE BOARD. Perhaps the official communication from the War Department transmitting them might throw all the light needed on the subject.

The RECORDER. I wrote a communication to the chief clerk of the War Department, in whose hands I understood these various documents to be, and requested that they might be sent to me for my information, so that I could gather what I might from them as to this case.

The PRESIDENT OF THE BOARD. You do not feel at liberty to hand those documents to the Board in secret session without such permission?

The RECORDER. The character of the Board is such that I am perfectly willing to do so. I merely suggested whether it might be well to have such permission. But if the Board request me to do so, I will hand them to the Board, and will then feel myself relieved of all responsibility.

The PRESIDENT OF THE BOARD. Very well; you may do that.

Mr. BULLITT. I desire to call attention to an error of the Judge-Advocate. I have a communication from the War Department, signed by the Adjutant-General, in which he states, in answer to a communication from General Porter, that those papers referred to have been sent to the office of the Secretary of War, in place of being forwarded to the Judge-Advocate, in April last, and that that included the papers a list of which we have here, and included also, those among them that I have called for. I think the Judge-Advocate will probably find, upon reference to his correspondence, that those papers were received by him in April. I may be mistaken in that.

The RECORDER. Yes; you are. The Adjutant-General has evidently fallen into a misapprehension.

The PRESIDENT OF THE BOARD. He only states that they were sent to the War Department for that purpose.

The RECORDER. Those that I called for officially were all sent to me at one time. These were a separate batch that I found—an entirely separate and distinct lot—among the archives of the War Department, and not in the Adjutant-General's Office.

Mr. BULLITT. I was mistaken in saying that they were sent to the office of the Secretary of War. "All the papers in your case were sent to Major Gardner by the War Department." The Adjutant-General seems to be mistaken in his understanding of it.

The PRESIDENT OF THE BOARD. There were many documents sent with the original record which this Board never have examined. The time has now arrived when all those papers should be submitted to the Board.

Mr. BULLITT. I should also state that a second letter of the Adutant-General makes it still more plain, in which he says that those were sent to the Secretary of War, April 29, 1878, and from the Secretary's office transmitted to Maj. A. B. Gardner, Judge-Advocate and Recorder of the Advisory Board.

The RECORDER. There were two distinct batches of papers—one from the War Department records and one from the Adjutant-General's records.

Mr. BULLITT. We wish now to offer in evidence the return of General Piatt, dated September 1, 1862, reporting the condition of his brigade before and since the action of August 30, 1862. This is certified by the War Department.

The RECORDER. Of course, as that is a report made by a public officer in the line of his duty, no objection is to be made to it.

1123 The return is as follows:

HEADQUARTERS PIATT'S BRIGADE,
Camp near Centreville, Va., September 1, 1862.

GENERAL: Herein I have the honor to report the condition of my brigade before and since the action of the 30th ult.

The New York 86th, in order of companies, as follows:

Present in action.	Killed.	Wounded.	Missing.	Total.
Co. A, 57	2	6	5	13
" B, 69	.....	3	2	5
" C, 69	.....	4	10	14
" D, 58	.....	11	2	13
" E, 57	2	11	4	17
" F, 62	2	8	2	12
" G, 65	2	8	3	13
" H, 56	2	5	.....	7
" I, 56	2	3	3	8
" K, 65	1	8	7	16
623	13	67	38	118

SIXTY-THIRD INDIANA VOLUNTEERS.

Present in action.	Killed.	Wounded.	Missing.	Total.
Co. A, 51	2	7	.....	9
" B, 48	1	5	4	10
" C, 54	.....	.....	1	1
" D, 48	.....	5	2	7
201	3	17	7	27

Grand total of loss: Killed, 16; wounded, 84; missing, 45; total, 145.

I reached the field of action, after a march of thirteen miles, at about four o'clock of the 30th ult. At 4½ I received orders to enter the field on the left of our line. I did so, and formed in rear of battery. We remained in this position until the *battery* was driven back, when I received orders to move at a charge to the woods on the extreme left.

The order was immediately obeyed. An order reached the *Indiana* regiment at this time, detaching it to support a battery on the left. The New York 86th continued to move forward over a plain of three hundred yards, under fire, until it reached the woods, where the contest lasted until the left gave back; before I could rally them the right also *gave* way, the whole line falling steadily back by the left, and was withdrawn.

I cannot speak too highly of the officers in command. They all did their full duty, rallying and encouraging the men, who for the first time were under fire.

I am, general, respectfully, yours,

A. SANDERS PIATT,
Brig. Gen'l Com'd'g.

ADJUTANT-GENERAL'S OFFICE, WAR DEPARTMENT,
Washington, October 12, 1878.

Official copy.

E. D. TOWNSEND,
Adjutant-General.

1124 Mr. BULLITT. We have now a letter, dated October 11, 1878, from the Adjutant-General's Office, in which he states what the consolidated morning report of the Fifth Army Corps was August 31, 1862. That portion of the letter which relates to that matter we wish to offer in evidence.

The RECORDER. This being merely a letter, and not an official copy of the document itself, I shall object to its admission, for the reason that there is nothing to show when the alleged report was filed. We have seen documents offered here that have been filed years after the event to which they relate, and we know from some documents that have come up that the petitioner has been filing, or causing documents to be filed there for the past series of years since his trial.

Mr. BULLITT. I trust that the Recorder does not mean to insinuate that the petitioner would have done such an act as this to which the Recorder has referred or that the War Department would have permitted it. I have too much respect for the gentlemen connected with the War Department to believe that they would allow a fraud of that kind to be practiced by anybody, even supposing that the Recorder thinks that General Porter could be capable of doing such an act, which I am sure there is nothing to warrant by anything in his life. However, I should say if the Board feel that this letter should not be received in evidence we hope to be allowed to send to Washington to procure from

the War Department a certificate of the facts which are contained in this paper, and which we wish to offer in evidence.

[The paper was then handed to the President of the Board for his inspection.]

The RECORDER. I made no insinuations and had no intention of making any insinuations. I am merely speaking of the ordinary rules of evidence; that documents filed many years afterwards would not be proper as official reports by which to prove a state of facts at a previous time.

The PRESIDENT OF THE BOARD. This seems to be a report from the Adjutant-General of what actually exists on the records of the department, duly authenticated by the returns of brigades—Sykes' division and Morell's division—for certain dates. We all know that returns are frequently made long after the date to which they relate, and upon the receipt of the full information which is necessary to make them accurate. We do not think it material, therefore, at what time they are filed, they being certified by the Adjutant-General as a transcript from the records of the War Department.

The RECORDER. Would it not be better to get the return itself?

The PRESIDENT OF THE BOARD. There is no objection to that.

The RECORDER. And, instead of putting the responsibility upon me, to let the other side get it?

The PRESIDENT OF THE BOARD. It cannot be expected that this Board should make the distinction between what the Adjutant-General says is the return and the return itself. It is not of sufficient consequence to ask for the official return when the Adjutant-General has sent a letter stating what it is.

The RECORDER. They are trying to establish that they had a less number of men on the 29th of August in the Fifth Corps than the government has always maintained were there. If the original returns come here we can see exactly what the state of affairs was on the 31st, when the report was made, what were the losses during the action of the 30th or the 29th, if any, and then the Board can form an approximation if they desire to. As it will be some time, probably, before the Board makes up its findings, a proper return of that character can be filed.

1125 The PRESIDENT OF THE BOARD. This paper will be admitted as it is. We will be glad if the Recorder, as it would be his duty to do at the request of counsel, should ask the Adjutant-General for the official return.

The letter admitted is as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, Oct. 11th, 1878.

Gen. FITZ JOHN PORTER, 119 *Liberty Street, New York City.*

SIR: In reply to your communication of the 8th instant, I have respectfully to inform you that, after a thorough examination of the files of this office and records of the Fifth Corps and Army of the Potomac, filed here, no field report of the Fifth Corps, made during the last days of August, 1862, can be found. There is nothing of the Army of Virginia on file here excepting books.

The following reports have, however, been found here:

Second Brigade, Sykes' division, August 27, 1862: 67 commissioned officers and 1,698 enlisted men present for duty.

Third Brigade, Sykes' division, August 27, 1862: 44 commissioned officers, 1,099 enlisted men present for duty.

Morrell's division, September 1, 1862: aggregate present for duty 3,867.

Sykes' division, September 1, 1862: 151 commissioned officers, 3,338 enlisted men present for duty.

Consolidated morning report 5th Army Corps, August 31, 1862.

336 commissioned officers and 6,590 enlisted men present for duty.
The following are the regular infantry regiments, and number of companies to each, serving with Sykes' division, Fifth Army Corps, August 31, 1862:

Brigades.	Regiments.	No. of companies.
First	Third United States Infantry	9
	Fourth United States Infantry	8
	Twelfth United States Infantry	8
	Fourteenth United States Infantry, First Battalion	8
	Fourteenth United States Infantry, Second Battalion	8
Second	Second and Tenth United States Infantry	12
	First and Sixth United States Infantry	12
	Eleventh United States Infantry	8
	Seventeenth United States Infantry	8

Very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

The PRESIDENT OF THE BOARD. We do not imagine that there is any difference between what the return is stated to show and the return itself.

The RECORDER. That is not a complete return up to the 31st; it does not show the actual losses.

The PRESIDENT OF THE BOARD. We would be glad to have a complete return. The evidence is pretty strong as to what the exact number was; near enough for practical purposes.

The RECORDER. Then I consider that my objection is overruled.

Mr. BULLITT. We now propose to offer a paper; and allow me to say, in making this offer, that I do it with the hope that the Recorder
1126 will not object to it, because, if he does, I feel obliged to say that I do not think we can maintain a legal right to introduce it, and I do not wish to take a position which I cannot maintain. We have supposed that upon General Pope's appearance here, if he had come, we would have found the duplicate of this paper in one of his dispatch-books. It is a dispatch dated—

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, Aug. 28th, 1862—6.5 a. m.

Maj. Gen. F. J. PORTER, *Commanding 5th Corps:*

GENERAL: Major-General Pope directs me to say that General Hooker reports his ammunition exhausted. Gen. Pope desires, therefore, that you come forward with your command at once with all possible speed, and that you send back to hurry up your ammunition-train.

I am, general, your obedient servant, very respectfully,

GEORGE D. RUGGLES,
Col. & Chief of Staff.

We called Colonel Ruggles' attention to it, but he did not recollect it, and were unable to prove it by him.

We find it in a document published some years ago by General Roberts, headed "Pope's Campaign in Virginia, its Policy and Results"; and we are very desirous to have that admitted.

The PRESIDENT OF THE BOARD. Is that the origin of its appearance here so far as known to counsel—its publication by General Roberts?

Mr. BULLITT. Yes; we have no knowledge of that dispatch appearing anywhere else.

The PRESIDENT OF THE BOARD. Its receipt cannot be proved at this late day.

Mr. BULLITT. No, sir; whether it was received was very doubtful, and we are not able to establish the fact that it was ever received. My impression is that it was not.

The RECORDER. I have no objection.

(The dispatch was then considered to be in evidence.)

Mr. BULLITT. The next document which I will offer is a book containing a report of Major-General John Pope to the Committee on the Conduct of the War. The book is headed—

Supplemental Report of the Joint Committee on the Conduct of the War. In two volumes. Supplemental to Senate Report No. 142, Thirty-eighth Congress, 2d session. Volume II. Washington: Government Printing Office. 1866.

Then there is a resolution which was passed by the Senate on the 18th of June, 1866, directing its publication, signed by J. W. Forney, Secretary; and a similar one by E. McPherson, Clerk of the House of Representatives. A report made to the Joint Committee on the Conduct of the War, by Generals Sherman, Thomas, Pope, and others, that we wish to offer in evidence; it has been already alluded to by Colonel Smith in connection with this testimony, and maps which accompany it. We wish to offer that report in evidence.

The RECORDER. I object to that. Whatever was asked Colonel Smith was asked him on cross-examination as to those maps—not on direct examination, and of course the petitioner's counsel are concluded by whatever Colonel Smith said on that subject as to collateral matters.

Mr. BULLITT. Colonel Smith identified them as being the maps which had been made in connection with this report. The Board will recollect that, I presume.

The PRESIDENT OF THE BOARD. We do not propose to decide the question upon those technical grounds.

The RECORDER. All these come in together under one ruling.

1127 The PRESIDENT OF THE BOARD. Yes; we of course want to be as certain as possible that there is no doubt about the authenticity of the documents.

The RECORDER. I presume that is authentic.

The PRESIDENT OF THE BOARD. If there is any doubt about that, you can send the document to General Pope or the person who signed it, and ask him to avow or disavow his authorship. The question of its admission is still to be considered.

Mr. BULLITT. We then offer General Pope's official report and supporting documents, furnished by the honorable Secretary of War, and published by resolution of the House of Representatives March 3, 1863, which is certified to by the Adjutant-General. We have his certificate here.

The PRESIDENT OF THE BOARD. That will be governed by the same ruling as the others, whatever may be determined.

Mr. BULLITT. So far as the documents which have been offered in evidence by the Recorder are concerned, there was an understanding that we were to indicate to the Recorder such portions of those documents as we ourselves propose to rely upon. We have not had time to do that, and I have said to him that we would do it in ample time for the argument. That closes our documentary evidence. We have one witness whom we wish to call this morning.

AUGUSTUS P. MARTIN, called on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. MALTBY:

Question. State your residence and occupation.—Answer. Boston; boot and shoe business.

Q. On the 29th of August, 1862, what position did you hold in the Army of the United States?—A. Captain Third Massachusetts Battery, and chief of artillery Morell's division, Porter's corps.

Q. Have you been examined previously in this case?—A. I have; in the original trial.

Q. Have you examined the map before the Board?—A. I have.

Q. Will you state where you were about 11 o'clock on the 29th of August with reference to that map?—A. We were on the right of the road leading from Manassas Junction to Gainesville, near Dawkins' Branch.

Q. You alluded in the former trial to one brigade and one battery moving off to the right shortly after, evidently preparing to form on the right of the brigade on a hill; what brigade did you allude to?—A. Butterfield's.

Q. What battery?—A. My own; the Third Massachusetts.

Q. In what direction (indicate on the map) do you presume that General Butterfield and that battery commanded by yourself moved?—A. To the right and front; down across the run to the right.

Q. In reference to the railroad, what was your direction and march?—A. We moved towards the railroad and up to the railroad.

Q. Did you notice General McDowell at that time; did you see him?—A. I noticed General McDowell about the time we moved off, when he came up to General Porter.

1128 Q. What were your own personal movements after that time?—A. I moved off to the right with the battery and brigade that were moving off—supposed to take position somewhere there—and suddenly the troops that were moving off in that direction were brought back, leaving General Butterfield there alone. By whose order I never knew.

Q. What were your own personal movements in that section of country?—A. My principal location and headquarters during that day was with Hazlett's battery, which was a part of my command at the time, on the right of the road. It was the only battery kept in position during the entire day; the others were moved about from place to place. One was in the rear, Hazlett's battery at the right of the road, and the other battery was in the rear, or some position on the opposite side of the road—left of the road—ready to be thrown into position.

Q. Were you over on the left of the road that day much?—A. I was all about in that direction reconnoitering for positions, not knowing what might occur during the day; I was quite familiar with the line at the head of the column and the ground.

Q. Were you at the front all day?—A. All day.

Q. Did you notice any body of Union cavalry, of fifty or seventy men, in the vicinity of the front that day, or anywhere thereabouts?—A. Nothing more than a few orderlies.

Q. Did you observe any movement in the nature of a retreat in General Porter's column that day?—A. No, sir; there was no order of that kind given. That could not have been, else my command would have been the first thing ordered to the rear.

Q. Did you hear any sounds of musketry during the daytime that day?—A. Skirmish firing only.

Q. Were there any sounds that indicated to you that a furious battle was raging on the right?—A. Not the slightest. My recollection is clear. I have the fact so recorded in my diary, and my diary makes it perfect as far as my memory goes. If there was any it was beyond our hearing.

Cross-examination by the RECORDER:

Q. You were chief of artillery to Morell's division?—A. Yes, sir.

Q. How many batteries were there in that corps at that time?—A. I don't know. They were changed constantly.

Q. Do you know at what time you arrived at Dawkins' Branch?—A. About eleven o'clock.

Q. Might it have been half past ten?—A. No, sir; I should say it was half past eleven if I was going to change the time either way.

Q. Your batteries were then all up in that neighborhood?—A. All brought up to the front—all three of these batteries.

Q. In concealment, or were they displayed?—A. One in position in front of the skirt of woods on the right of the road running from Manassas Junction to Gainesville, fronting on Dawkins' Branch. The other one was concealed in the woods in the rear of that battery, and the remaining battery was on the left-hand side of the road in the woods to the rear.

1129 Q. Will you indicate on the map where those woods were on the left of the road?—A. Just a little clump of bushes there, enough to cover the battery out of sight.

Q. Is there not a ridge running along there crossing the road?—A. Yes, sir.

Q. In reference to that ridge where was that battery?—A. To the left in the rear of the ridge; that is to say, it was on the left of the road and in the rear of that ridge.

Q. Therefore how far would you say it was to the rear from Dawkins' Branch?—A. It would be impossible for me to say, more than perhaps two hundred yards.

Q. That ravine in which Dawkins' Branch is, does it rise gradually to this ridge or does it rise precipitously?—A. It rises abrupt.

Q. Were you fired on during the day by the artillery?—A. We were; and it was replied to by Hazlett's battery altogether.

Q. About how many shots do you suppose were fired at you?—A. There was desultory firing for an hour, perhaps.

Q. From the enemy?—A. From each side.

Q. Now as to the enemy, about how many shots do you recall that they fired?—A. I would hardly want to trust counting them now; I only know that occasionally there were shots exchanged—no rapid firing.

Q. As many as four from the enemy?—A. Yes, twenty-four.

Q. What position did they occupy, so far as you were concerned?—A. The enemy?

Q. Yes.—A. They were in a piece of timber in front of us; I should say 1,500 yards, perhaps.

Q. To your left in front or your right in front?—A. Exactly in our front; I don't know as I am competent to give any opinion about that, for I did not go into the skirt of woods; I only know that they were there, that is, that there was artillery there and some skirmishing with infantry.

Q. Do you know what troops were sent out in front of you that day?—A. I do.

Q. Whose?—A. The Thirteenth New York, Colonel Marshall.

Q. They remained in the skirt of timber in front of you all day?—A. All day and all night, too, I think.

Q. Were any other troops sent out?—A. The Twenty-second Massachusetts was sent out to the left as sort of flankers; but not to the front very far.

Q. Was it not brought in very quickly to its original position?—A. The Twenty-second?

Q. Yes.—A. Not to my knowledge.

Q. It might have been brought in without your recollecting
1130 it?—A. It is possible; it might have joined the brigade without my knowing it.

Q. No other troops sent out?—A. Not that I know of; I did not go out to the front line myself.

Q. Were not some of Berdan's sharpshooters there?—A. Yes, they were there; the first shot from the enemy's guns killed a man in that regiment.

Q. Was it not in the First Michigan that a man was killed?—A. No, sir; I think it was Berdan's.

Q. On which side of the road?—A. On the right side of the road.

Q. If it was in the First Michigan that a man was killed, you would be mistaken?—A. Possibly; I don't know that I made any special note of it; but that is my recollection; I recollect the shot flying through the regiment.

Q. Do you know whether the United States sharpshooters were deployed as skirmishers or not?—A. I do not; they were moving at the time I speak of.

Q. In what direction?—A. To the right.

Q. In a brigade formation, line of battle?—A. No, sir.

Q. Did you see where they went to?—A. No, sir; my attention was drawn in another direction.

Q. Your attention was pretty much absorbed with your own command?—A. Yes; entirely. I observed some other things as they occurred.

Q. Did you know the Sixty-second Pennsylvania?—A. Yes.

Q. Did you see them deployed that day?—A. I do not know that I did.

Q. Might they not have been deployed as skirmishers without your knowledge?—A. Undoubtedly they could have been, and very likely might have been.

Q. You remained there, I understand you to say, at the front, all the time?—A. I did.

Q. Did not you during the day go back to Bethlehem Church?—A. I did not.

Q. When General McDowell came up and went off to the right, did you see him come back?—A. I did not; after he moved to the right I went to the left of the road about that time, and moved off from the position where they were when he came up.

Q. How many orderlies did you see that day to the front?—A. I did not see more than three or four at one time together.

Q. When General McDowell came up, did he have anything of an escort?—A. He did not have anything of an escort; he had perhaps two or three staff-officers and an orderly or two, a very small number, with him.

1131 Q. No cavalry escort?—A. Not at all; not that came to the position where I was.

Q. If he had left any of his escort to the front, would you have known it?—A. During the day?

Q. Yes.—A. I think I should undoubtedly have known it.

Q. Do you know General Schriver, the inspector-general?—A. I did know him some years ago.

Q. Did you see him that day?—A. I could not tell you.

Q. Did any of General McDowell's staff come back to the position where you were after they had gone to the right?—A. That I could not tell you. I left that position immediately after General McDowell came up and spoke to General Porter, and moved off to the left.

Q. Where did you take up position then?—A. I was moving about; I did not have any fixed position.

Q. Then you do not know whether any of General McDowell's cavalry escort were left there or not?—A. I know there could have been no large number, anything like a company of cavalry or a squadron of cavalry, left there without my knowledge anywhere along the front of the line; because I made it my business to reconnoiter the ground and know something about the position in case I was called upon to put some batteries in position.

Q. After that you went back to the position where the battery was, behind the ridge?—A. To Hazlet's, and I made my principal headquarters at Hazlet's during that day, as his was the only battery in position.

Q. Were you with General Morell during the day?—A. We were about together a great deal of the time, most of the time.

Q. When information came in from Colonel Marshall from the front, did you know of it?—A. I did.

Q. Do you know of any other information coming in from the front than that of Colonel Marshall's?—A. From no other regiment.

Q. If anything else had come in from the front, would you have noticed it?—A. It was not absolutely necessary for me to know it; but I should not have asked any questions unless I happened to be present when the information came in.

Q. Were you so placed that you would have known?—A. I might and might not have known. If I had been with General Morell or General Porter I should have known—probably by overhearing only.

Q. I understood you that your three batteries were up there all that day and all that night?—A. They were, and all night.

Q. Do you know of any effort being made to take that battery that was towards your front, during the day, that fired upon you?—A. The enemy's battery?

Q. Yes.—A. I do not.

The examination of this witness was here closed.

1132 The PRESIDENT OF THE BOARD said: The Board think it proper to put upon record, as briefly as possible, the grounds of their decision to admit certain kinds of testimony in this case, departing somewhat from the general rule of evidence in that regard. General Terry will read the decision of the Board:

General TERRY then read as follows:

In the opinion of the Board there is one feature of this case which should be kept constantly in mind, and which is of great importance in determining questions of evidence. It is that the application of the petitioner is made to the *pardoning* power; his application is for Executive action. This Board was not appointed to retry the original case—there is no authority for such a proceeding—but its duty is, after hearing all the evidence presented to it, *to advise the President* what justice may

require to be done. That advice may be that justice has already been done; it may be that the President's power of pardon, so far as the sentence is still unexecuted, shall be exercised; it may be that the power of Congress should be invoked in the petitioner's behalf.

Now, it seems to the Board that it should admit any evidence which it would be proper for the President to listen to, were he personally examining the case, with a view to determining whether or not he should exercise his constitutional power of pardon.

On an application for the exercise of the pardoning power, nothing could be more pertinent than evidence that one of the principal witnesses against the applicant, at the time of his trial, had subsequently made declarations contradictory to, or inconsistent with, the testimony given by him at the trial. No authority vested with the power to pardon would refuse to listen to such evidence as that.

Again, so far as this Board is concerned, all the testimony before it is *new*. The record of the trial of the petitioner comes before us simply as a record of evidence taken, evidence which is to be considered in connection with such other evidence as may be presented for consideration. So far as we are able to see, this record testimony is to be received by us in precisely the same manner as if it had been repeated before us orally by the witnesses themselves, and it is entitled to neither more nor less weight than it would have been entitled to had it been so given.

Had it been so given, undoubtedly the petitioner would have been entitled, after laying a proper foundation by cross-examination, to prove any declarations heretofore made by any witness inconsistent with the testimony given by him here. We think that the same rule should be applied to the testimony which is contained in the record, and that evidence of declarations claimed to be inconsistent with the record testimony, and made at any time prior to the time when the record was presented to us, should be admitted.

But it may be said that a proper foundation has not been laid by cross-examination. This is true; but the witness whose subsequent declarations are sought to be proven has been summoned, and all the power which the Board possesses has been exercised to bring him here. He has declined to attend except upon conditions which, as the Board understands them, would forbid the very cross-examination in question.

These facts, in the opinion of the Board, amply justify a departure from the ordinary rule which requires that a cross-examination should precede the proof of inconsistent declarations.

The PRESIDENT OF THE BOARD. The Board desire to add, also, to that, that the military code under which we are acting, whether it be the common law of the military service or the Articles of War as interpreted by uniform decisions of courts-martial, forbids any distinction
1133 in our action, or in our minds, between any testimony given by an officer of the Army under oath before a court-martial and his deliberate public statements, either in the form of official reports or of public declarations. The obligation is held universally to be the same in both cases—the penalty for falsehood is, in military estimation, the same in both. Therefore, we do not and cannot in this case recognize any difference between the sworn testimony of an officer presented here of record in the trial of General Porter before court-martial and his deliberate public statements in reference to that important case designed to affect either public interests or personal rights. We therefore admit all printed, public, authentic declarations of witnesses before that court, to be considered here in that light. Whether it may be possible under this general ruling to determine what disposition to make of all these papers

in question the counsel and the Recorder can assist each other in deciding, and thus perhaps save the necessity of a detailed examination of the separate papers. So far as that cannot be done, the Board will examine the papers separately and determine.

The RECORDER. Then the record will show that my objection to the admission of this class of testimony is overruled.

The PRESIDENT OF THE BOARD. Certainly. If that should not be the case, the Recorder can call the attention of the Board to it at some subsequent time, and a meeting can be arranged, if necessary, for the purpose of deciding any question that remains.

The RECORDER. Then all these will go in as appendixes to the record.

Mr. BULLITT. We suppose there can be no necessity for an extraordinary session for any such purpose. We must, however, hear from the Recorder before we can finally determine.

The RECORDER. It seems to me that the ruling is very broad, and one that will cover everything I ever had in this case or expect to receive.

The PRESIDENT OF THE BOARD. We understand the evidence on both sides of this case to be closed, with two or three slight exceptions —General Rosser, General Dobson, and the individual whom the Recorder has mentioned this morning, provided his evidence is found to be material. The testimony of these three witnesses may be completed and placed upon the record. It may be that then the record can be perfected through the agency of the Recorder and the counsel for the petitioner.

Mr. MALTBY. With rebuttal, if necessary.

The PRESIDENT OF THE BOARD. We rely upon the counsel and the Recorder to act in that respect according to the rules of evidence. Therefore, nothing remains to be done but to fix the time when the counsel and Recorder may be ready for argument.

After informal discussion, the President of the Board said: The summing up of the counsel for the petitioner shall first be heard, then the rejoinder of the Judge-Advocate; after which another of the counsel for the petitioner will be heard and replied to by the Recorder. The conclusion will be heard from the petitioner's counsel.

The RECORDER. I think it hardly fair to me if these gentlemen are all to speak. I have had to take alone the laboring oar for the government. If they are all to speak, let them do so before I reply. I went very fully into the government case in my opening argument purposely to give them such insight into it as would be of service to them. Let them all speak and then let me have the close, as is always customary, I believe, in military tribunals. I insist on that as a matter of fairness and right to me. I have to go over all this record alone; I have quadruple the labor that they have; they can divide the case between themselves, and one take one branch and the other another branch.

1134 Therefore, I ask, not only from the fact that I am alone, but because I am the government representative (made so by your ruling that I have the closing word. I will try to make it brief, and I will follow the petitioner's counsel as rapidly as possible.

The PRESIDENT OF THE BOARD. The Board are very sorry to do anything which the Recorder thinks will be any obstacle in the way of his doing all that is possible to be done in the line of his duty. But we have considered that matter, and cannot fail to recognize the principle that in this kind of a case the counsel for the petitioner have the right to the closing argument. It has been suggested by General Terry that

if the Recorder prefers to be heard only once, two of the counsel for the petitioner should be heard first.

The RECORDER. I dislike to protest as much as I have in this case, but, with the permission of the Board, I will enter a protest on the record againg the ruling that does not give me the closing argument.

The PRESIDENT OF THE BOARD. I think that the general rule in practice in such cases will not sustain the Recorder in that position. As the counsel for the petitioner admit the burden of positive proof is upon them, they must make their case affirmatively; they are not on the defensive. In accordance with that state of facts, and the principle based upon it, we think that they must be entitled to the closing argument. If the Recorder prefers to be heard only once, which is very natural and very proper, then two of the counsel will be first heard, if two desire to speak; then the petitioner's counsel will have the closing argument; it being understood that the substance of the summing up is to be presented in print to the Recorder, if possible, in advance, so that he may have ample time to prepare his answer.

Mr. BULLITT. We will do that.

The PRESIDENT OF THE BOARD. So that it remains with the Recorder to consider in his own interest and pleasure whether he will be heard once or twice.

We will now adjourn until Wednesday, December 18, 1878, at 11 o'clock a. m., to meet at West Point.

The RECORDER. I hope the Board will continue to meet here at Governor's Island, not only on the ground of economy, but of convenience to me in making the argument which I have to make in reply.

The PRESIDENT OF THE BOARD. We came here somewhat because of the convenience of the Recorder, and we now think he ought to come up there. We believe that we can make him comfortable.

The Board then, at 1 o'clock p. m., adjourned.

GEORGE H. DOBSON, called by the Recorder, and examined in the city of New York, on the 23d day of November, 1878—present, the Recorder, and Mr. Maltby, of counsel for the petitioner, and the petitioner—having been duly sworn, testified as follows:

Direct examination:

Question. Where do you reside?—Answer. Baltimore, Maryland.

Q. What is your occupation?—A. Lumber merchant.

Q. Were you in the military service of the United States in August, 1862; if so, in what capacity?—A. As captain of Company A, Third Regiment Maryland Volunteer Infantry, Col. David P. De Witt.

Q. With what rank did you leave the service?—A. I left the service as captain.

1135 Q. Where were you on the morning of Friday, August 29, 1862?—A. At Bristoe Station, or in that vicinity.

Q. To what division, brigade, and corps did you belong?—A. Second Brigade, Prince; Second Division, Augur; Banks's corps. It was either Prince or Augur at the time you mention in command; one was captured and the other wounded.

Q. Do you know of any movements of your regiment, brigade, and division on that day; if so, what were they?—A. I believe on that day our regiment with some other troops, I don't know how many, were moved in the direction of Gainesville; it was given out that they were to go to Gainesville, as I understood.

Q. At the time?—A. Yes; I think it was given out that they were going to Gainesville.

Q. At what time did your regiment and those other troops leave Bristoe Station?—A. I could not say exactly. I could tell you what time they halted and about the distance they marched, so you could form some idea of the time. I believe they halted about half past three or four o'clock—between three and four o'clock—and the distance was about three or three and a half miles.

Q. In what direction?—A. Said to be in the direction of Gainesville. I was simply a line officer; I had no opportunity, as a general officer would have, of knowing those things.

Q. Of knowing what?—A. Of knowing where we were destined.

Q. What direction did you take on leaving Bristoe Station?—A. We took the direction of one of two roads that led from Bristoe Station towards the enemy's front; that is what we understood.

Q. Now as to the points of the compass, the road that you took?—A. I could not tell from my knowledge then.

Q. Northeast or southeast?—A. I could not tell from the direction of the compass at that time.

Q. At what time did you say you halted?—A. Between three and four o'clock.

Q. What then occurred, after halting, within your knowledge?—A. To me individually?

Q. Yes; state all.—A. A gentleman came and invited some of the officers of the regiment to take dinner with him in the neighborhood.

Q. Was that to the front or rear of the position in which you were halted?—A. A little to the front of us.

Q. Go on and state what you then did, and what sort of a place it was that you went to.—A. I was one of a number who accepted the invitation, and when I got to his house it was too late for dinner; he had had his dinner, but he gave me something to eat. I was then, to the best of my recollection, inside of our own lines; our pickets had been thrown out upon the road a piece. When I got through eating, our pickets were driven in towards our regiment, and I was inside the enemy's lines; they fired at me as I came out three or four shots. I escaped and went back to the regiment.

1136 Q. Then what was done?—A. I think we went back to Bristoe Station.

Q. About what time in the day was that?—A. I could not tell you exactly; it was late in the day, between four and five o'clock, when I went up there, I suppose.

Q. What description of force of the enemy was it that drove in our pickets?—A. I don't know; I suppose the cavalry videttes that were stationed on the road when we came out. We did not see our pickets driven in; the house sat back from the road some distance; simply cavalry videttes that had dismounted and tied their horses to the fence-posts.

Q. The enemy's cavalry?—A. Yes, sir.

Q. On which side of the road was this house as you went up?—A. On the right of the road as we went up, to the best of my memory.

Q. Did you see any artillery?—A. No, sir.

Q. Did you know, or were you informed, at the time of the purpose of this movement of these troops out in this direction?—A. No, sir; I had no means of knowing that, except from hearsay at that time. I do not recollect that I ever heard any object at all.

Q. To the best of your recollection, what number or kind of troops were with your regiment then?—A. I think nothing but infantry, to the best of my recollection.

Q. How many regiments?—A. I could not tell you.

Q. Could you estimate the number of men?—A. No, sir; I would not like to do so.

Q. As to the number of regiments, as near as you can recollect, how many regiments were there?—A. If I am not mistaken, there were the whole of our brigade of infantry and a Maryland battalion, the Purnell Legion.

Q. Whose house was this at which you stopped for dinner?—A. I think the man told me his name was Judge Baker—they called him Judge Baker. I made a note of it at the time. There was a gentleman, two or three years ago, who called upon me to get some information upon the subject, and I gave him that name; and it has been in my mind ever since.

Q. How long had your brigade been in Bristoe at this time, the 29th of August?—A. I think they came there either on the night of the 27th, or early on the morning of the 28th; I have had the impression that it was the 27th; I am not positive.

Q. What was the strength of the corps on that day?—A. General Banks' army corps?

Q. Yes.—A. We roughly estimated it at 10,000 troops; that was the general idea that prevailed with us at that time.

Mr. MALTBY. I shall have to object to this witness giving testimony as to the number of troops.

The WITNESS. I was not in a position to know.

The RECORDER. I am going to introduce the official return.

Mr. MALTBY. Then that is another matter; that will prove itself, so I will have to object to that question.

1137 Q. Did you know which was north?—A. I think not; I could not remember the points of the compass.

Q. Have you been on that road since the 29th of August, 1862?—A. Yes; I have been in the neighborhood.

Q. In what direction was that?—A. In the neighborhood of where I supposed I was, was in a northwest direction.

Q. On a road leading towards what place?—A. Towards Gainesville.

Q. From Bristoe?—A. Yes, sir.

Cross-examination by Mr. MALTBY:

Q. Who commanded your brigade on the 29th?—A. I think the colonel of the One hundred and eleventh Pennsylvania, Steinberner.

Q. Who commanded that division?—A. I think it was General Greene.

Q. What is his first name?—A. I don't know; he was commanding the brigade before General Auger got wounded.

Q. What regiments were in your brigade?—A. The One hundred and eleventh Pennsylvania, One hundred and second New York, one Ohio regiment, and our own, Third Maryland, and the Fourth and Sixth Maine Batteries.

Q. That all?—A. I think so.

Q. In which brigade were you?—A. Second.

Q. What were the regiments of the first brigade?—A. I don't know.

Q. What regiments in the third?—A. There was no third brigade in our division.

Q. Do you know whether the Sixteenth Massachusetts was in your division?—A. I do not think it was; if it was, I don't know it.

Q. What time in the day do you recollect to have arrived at Bristoe Station, when you first came there?—A. I think it was late in the night of the 27th or early in the morning.

Q. What did you do after your arrival there; how did you occupy the

day?—A. We occupied it in getting something to eat. We had had a hard travel and we were all pretty much worn out and hungry, and we tried to make ourselves comfortable. We met a battalion of Marylanders there; they were already stationed there; they had had a fight, I think, with some cavalry that had come around there some time previous. It was the first time we had met, and we associated with them and compared notes with them, and so forth.

Q. Were you on active duty?—A. No, sir. I think we were there simply to rest.

Q. What did you do the next day?—A. I think we rested all the next day.

Q. You think you rested two days at Bristoe after you arrived?—A. Yes. There were a good many stores at Bristoe, a large train, and I think we were kept there to give us a rest, and at the same time
1138 protect the train. I think we were only there one day. If we got there on the 27th it must have been late at night, or very early on the morning of the 28th.

Q. What do you mean by "early in the morning"?—A. After midnight—one or two o'clock.

Q. You are certain that you rested there one whole day?—A. I think so.

Q. On the 29th, when you made this march, as you supposed, in the direction of Gainesville, how was your regiment occupied before you marched?—A. Simply at rest.

Q. What caused you to think that you moved in the direction of Gainesville? You say it was given out; who gave it out?—A. It was generally talked of in the mess that I messed with; that is the information that I got.

Q. You had no information from superior officers?—A. Yes; the mess that I messed with were all my superior officers.

Q. With whom did you mess?—A. Messed with the field and staff officers of the regiment; they were my superior officers at that time.

Q. Was your regiment the leading regiment?—A. I think it was the leading regiment on that occasion; we were known as the second regiment in the brigade; I think it was the leading regiment at that time.

Q. What causes the impression that the whole brigade was there with you at your advanced position that day, in the direction of Gainesville, as you understood it?—A. I only judged from the body of troops that were marched up; I do not say positively that the whole brigade was there.

Q. What causes the impression?—A. The cause of the impression was the large body of troops; it was quite an imposing string on the road—a couple of thousand men, perhaps.

Q. Do you recollect any graveyard on the march?—A. No, sir; I do not.

Q. After you came away from this advanced position, what time did you arrive at Bristoe?—A. I think early in the night.

Q. And the next day what did you do?—A. The next day I was sent to Alexandria; I was taken sick. I was sent to Alexandria on the 30th.

Q. Do you know what your regiment did?—A. No; I know nothing about it after that, of my own personal knowledge.

Q. What time of day were you taken sick?—A. I had been sick for some time back.

Q. What time were you sent from Bristoe Station?—A. In the evening of the next day, I suppose two o'clock, probably; I remember that from the fact that I met my brother, who was a provost marshal at Alexandria at the time, coming out toward the field; he had heard that I was wounded or something.

Q. How did you leave Bristoe Station?—A. In an ambulance.

Q. How were you personally occupied during the morning pre-
1139 vious to your leaving Bristoe Station?—A. I was lying down in a shelter tent.

Q. When were you first confined to your tent?—A. I had been confined to my tent on several occasions.

Q. About that time?—A. I had been confined to my tent probably from the time I got back; any severe march or any fatigue would lay me up for a while.

Q. Were you confined to your tent on the day of your arrival at Bristoe?—A. Part of the day.

Q. When they came up to Bristoe first, I mean?—A. No, sir; I don't think I was.

Q. Were there any other troops than the Maryland troops that you saw there when you arrived at Bristoe?—A. I don't think there were any troops at Bristoe except the Maryland troops.

Q. How was your camp located; do you recollect whether it was located in the open country about Bristoe?—A. We were immediately upon the line of the railroad.

Q. Was it in an elevated position, or in a depression?—A. I think it was on level ground.

Q. Do you think you could have seen around Bristoe the presence of troops, if there were any?—A. We could see through the spaces between the houses, and could see troops coming between the houses.

Q. If there were troops at Bristoe you think you were in a position to have known it?—A. I think so; if they were anywhere in that immediate neighborhood.

Q. When you were on the march did you hear any battle?—A. No, sir.

Q. When you were on the march towards Gainesville, as you understood?—A. No, sir.

Q. When you left, being sent home sick, do you recollect whether you heard any sounds of a battle?—A. I think I do. I think I remember sounds of battle on the 30th.

Q. This Judge Baker—you say that he told you that his name was Judge Baker?—A. I am not sure that he did; that was the name I understood him to go by.

Q. Who was the gentleman that called upon you and that you told this was Judge Baker?—A. I think it was in the autumn of 1874, I was in Marietta, Ohio, and saw a gentleman by the name of Barbour, and some time after that there called upon me a gentleman by the name of Smith, who said that he had been on the staff of General Pope.

Q. T. C. H. Smith?—A. Yes; that is the gentleman who said he had been on the staff of General Pope; he was writing up the history of that campaign, and asked me if I could not give him some information about certain movements. I told him that I knew but very little about it; had not an opportunity of knowing much, and I told him of this little circumstance.

Q. You are quite sure that you rested one day at Bristoe Sta-
1140 tion before you started on this march?—A. Yes; I am quite positive.

Q. One whole day?—A. Yes; and probably part of another.

By the RECORDER:

Q. How long did you remain there at his house?—A. I judge I remained there until five o'clock—probably half an hour.

Q. General Smith lived in Marietta then, did he not?—A. I think so; so represented.

By Mr. MALTBY:

Q. How do you fix the time at which you halted on your advance toward Gainesville at three and a half o'clock, or between three and four?—A. This gentleman invited me to dine with him. He said dinner would be ready at four o'clock. We had just come there at the time, and he came out to the camp to meet us. I could not go immediately. I went after awhile, and he had had dinner. I suppose he had given up the idea of any officers coming. I should say it was between four and five o'clock before I went up.

Q. Do you recollect where you were when you heard sounds of battle on the 30th?—A. No, sir; I could not locate the point.

Q. Which direction did you take in that ambulance?—A. Took the shortest route to Alexandria, whatever that route may be. I was inclosed; I could not see.

Q. Did you pass through Manassas Junction?—A. I think I did.

Q. Do you know where the Fifth Corps—General Porter's corps—was on the 29th of August?—A. No, sir; I do not.

Q. Or on the 28th?—A. No, sir; not of my own knowledge.

Q. Or any other troops of General Pope's army on the 28th or 29th?—A. Nothing of my own knowledge. I heard talk about troops passing around Manassas. I did not see any of them, and I know nothing about them of my own knowledge. I had not opportunity of knowing; my position in the Army did not give me opportunity of knowing.

Q. You said that you returned to that section of country?—A. I said I had revisited that section of country recently.

Q. How recently?—A. I was in that section of country last Wednesday.

Q. Did you go to Bristoe?—A. I did not.

Q. Where did you go?—A. I went to Manassas.

Q. And from Manassas where did you go?—A. From Manassas I went in a carriage—the road leading from Manassas to Gainesville where it forks with the road that comes from Bristoe to Gainesville; I went to a point known as Langley's mills; that is as far as I went; I went for the purpose of confirming my memory about the name of the man who lived in that neighborhood.

Q. What man?—A. Judge Baker.

1141 Q. Did you find the house?—A. I found a house that partially represented it; not perfectly so. I have no memory of the house that is there that I took to be the house that I visited.

Q. Did you find Judge Baker?—A. No, sir; I did not look for Judge Baker.

Q. Did you find features in the landscape that you recognized?—A. Very little.

Q. Then you are not positive that that was the place where you were?—A. No, sir, I am not positive; but that is the only place that I found that came anywhere near it.

Q. What caused you to go to Langley's mill—at your own suggestion?—A. No, sir; at the suggestion of a person who lived in this house—a family lived in this house from Vermont.

Q. So you did not go to Bristoe?—A. No, sir.

Q. You came back again to Manassas?—A. Yes, I visited several persons in the neighborhood.

By the RECORDER:

Q. Did you inquire for Judge Baker?—A. I inquired where Judge Baker lived, or had lived.

Q. Did you find where Judge Baker had lived?—A. I found where they told me he had lived.

Q. You say you only partially recognized this house?—A. That is all.

Mr. MALTBY. I shall object to the answer that he found where they told him Judge Baker had lived as being hearsay evidence.

Q. What was there about this house that you recognized as being the place where you had halted and dined?—A. Its distance from the road; its loneliness, not being surrounded by any out-buildings; and its size. There were some things about the building that would convince me that it was not the building. It did not seem to me to be the same shaped building that I had dined in; for instance, my memory was that there was a porch in front of the building where I dined, and I entered that porch, and there I got into a vestibule or hall, and on either side there were rooms. In this house there appeared to be windows all along the front, and no entrance. I found that it was used for a barn—corn and grain, &c., stored in it.

Q. Is the building a modern one, a recent structure, or an old building?—A. It is an old building.

Q. Was there anything in the interior of the building which made you partially recognize it? If so, what?—A. When I got into the building I found that it was in an incomplete state now; I found that it had been finished; I found that it had been lathed and plastered, but there was no lath and plaster on it at the present; it was not in a finished condition; it struck me that they must have torn it down and made a new structure.

Q. Do you know anything on the subject as to whether it was torn down and rebuilt?—A. Only from hearsay.

Q. Did you make any inquiries of people on the subject?—A. I did.

1142 Q. How far is this house from Langley's Mills?—A. I should judge it to be half a mile—a half mile nearer Bristoe Station, this way.

Q. Towards Bristoe?—A. Yes; half a mile further than the house towards Gainesville at Langley's Mills.

By Mr. MALTBY:

Q. Did I understand you to say that the house is between Langley's Mills and Bristoe?—A. Yes; half a mile this side of Langley's Mills.

Q. Towards Bristoe?—A. Yes.

The examination of this witness was here closed.

JOHN H. PIATT, called on behalf of the petitioner, and examined in New York, November 23, 1878 (present the petitioner, Mr. Maltby, of counsel, and the Recorder), having been first duly sworn, testified as follows:

Direct examination by Mr. MALTBY:

Question. Where do you reside?—Answer. New York.

Q. What was your position in the Union Army on the 29th of August, 1862?—A. I was captain and additional aid-de-camp on the staff of Major-General Pope.

Q. Where were you on the morning of the 29th?—A. We were on the march from Bull Run Creek to Centreville, and at Centreville.

Q. On what duty, if any, were you detailed or sent in your capacity as aid-de-camp?—A. When we reached Centreville on the morning of the 29th I was sent back by General Pope with an order to General McDowell.

Q. What general officer did you meet on your way to General McDowell?—A. I rode back on the same route that we took in reaching Centreville. Near Bull Run Creek, on the west side of the creek, perhaps a mile or so, I met a body of troops, and inquired what troops they were. I was told that they were General Porter's division. I asked where General Porter was, not having seen him before. They told me that he was at the head of the troops. I rode back and saw General Porter.

Q. He was ahead of the column?—A. Yes. I don't know whether he was exactly at the head of the column or some distance before the column.

Q. What, if anything, did you say to General Porter?—A. I told him I was just carrying an order to General McDowell which related to him, and I gave him the purport of the order.

Q. What was the purport of the order?—A. As near as I can recollect, it was an order to General McDowell directing General Porter to take General King and move towards Gainesville; advance towards Gainesville.

Q. About what time was this that you met General Porter?—A. This was in the afternoon of the 29th.

Q. What do you recollect the hour to be?—A. I have nothing to fix the time; I should judge in the early part of the morning, somewhere about nine o'clock.

1143 Q. What did you do then?—A. General Porter replied that I would have to see General McDowell, and directed me where I would probably find him. I rode on and found General McDowell about or near Manassas Junction.

Q. What did you then do?—A. I gave General McDowell the order. I met him on the roadside. He told me to say to General Pope that he had received his order, and he had directed Porter to put King upon his right so he could have him if he wanted him, that is, if General Pope said so.

Q. Then what did you do?—A. I rode back to General Pope.

Q. Where did you find General Pope?—A. I found him on the field of Bull Run. His headquarters were under a large tree. I don't recollect the distance from Centreville.

Cross-examintion by the RECORDER:

Q. What time did you leave Centreville to carry this order from General Pope to General McDowell?—A. I cannot be positive about the time. I should judge somewhere in the neighborhood of eight o'clock—in the early part of the forenoon.

Q. Did you see General Gibbon that morning?—A. I have no recollection of seeing General Gibbon.

Q. What road did you take in going from Centreville?—A. The road to General McDowell?

Q. Yes.—A. I took the road from Centreville towards Manassas Junction.

Q. Was it a direct road?—A. The road that we came, I suppose it was a direct road. It was the road that I was directed to take.

Q. Is there any difference in your mind between Manassas Junction

and Manassas Station?—A. Manassas Junction, if I recollect right, was the Junction where the buildings were burned, was it not?

Q. I am trying to find out your recollection.—A. I cannot say that I remember.

Q. Was Manassas Junction at the point where the two railroads intersected?

Mr. MALTBY. I have not asked him one thing about Manassas Junction.

The RECORDER. You asked him, and he said he met General McDowell at Manassas Junction.

The WITNESS. He was this side of Manassas Junction, or Manassas Station; I don't know what you call it; it was near a railroad.

Q. Near which railroad, the Orange and Alexandria, or the Manassas Gap Railroad?—A. I don't know. I have never had my attention particularly called to that matter since.

Q. With reference to the buildings that had been burned, where was General McDowell when you found him?—A. I found him before I got to that point. I did not go to that point. We had passed that point the day before.

Q. Where did you then meet him?—A. I met him at some point in the neighborhood of that brick house—I think they called it a warehouse—somewhere between that and the Junction.

1144 Q. Was not General Porter with him at that time?—A. No, sir.

Q. In order to get to that warehouse, what direction did you take?—A. A westerly direction.

Q. From what road?—A. The road that we came on to Manassas Junction.

Q. In order to get there did you go to Manassas Junction or Manassas Station before you went to the brick house?—A. I don't say I went to the brick house; but I think it was in that neighborhood. I don't know the localities. I did not get to the junction.

Q. Were you, in reaching this brick house, on the road from Centreville to Manassas Junction or Station?—A. I did not go to the brick house.

Q. In the neighborhood of the brick house?—A. I should judge I met General McDowell in the neighborhood of that house.

Q. About how far from the main road from Centreville to Manassas Junction?—A. Off the road. I don't think it was more than a quarter of a mile.

Q. Then you turned off from the main road in order to go towards this brick house?—A. I turned off from the main road in order to reach General McDowell.

Q. Do you know how far this brick house is from Manassas Junction?—A. I do not.

Q. Do you know how far it is from Centreville?—A. I do not.

Q. Did you take a note of the time when you left Centreville?—A. I did not.

Q. Did you take a note of the time when you delivered this verbal order?—A. I did not. I carried the order as fast as I could go—as my horse would allow me to go.

Q. How many miles do you judge you traveled in getting there?—A. I cannot say the distance; I don't know the distance.

Q. With reference to where you turned off the road to go to this brick house, where was General Porter?—A. General Porter, as I said, I met, I should judge, a mile west of the Bull Run Creek. I merely state a

mile, because I am not positive; but somewhere in that neighborhood—the other side of Bull Run Creek.

Q. Between the point that you met General Porter and the point you turned off to the warehouse, how far was it?—A. I have not any recollection of the distance. I know it took me some time to ride it.

Q. Which direction did you go when you turned off to the warehouse?—A. I turned to the right of the road, if I recollect right.

Q. What were General Porter's troops doing when you got
1145 there?—A. I did not see any of the troops. I just saw him and several of his staff officers about him.

Q. Did you see at any time that morning any of his corps?—A. Not that I recollect. The only troops that I saw were the troops I met on the road.

Q. Whose troops were those?—A. General Porter's.

Q. Then you did meet troops?—A. I met those troops.

Q. Where?—A. I met them, as I said, about, I should judge, in the fore part of the forenoon, about nine o'clock.

Q. Where did you meet them?—A. I met them, as I said, west of the creek that they call Bull Run.

Q. What direction does that road from Manassas Junction to Centreville, from the point where it turns off to the school-house from Centreville, take?—A. From Manassas Junction?

Q. Yes.—A. I could not say the points of the compass. I could not state positively, because I have never been over the ground since, and have very little recollection of it.

Q. You say you met those troops of Porter's corps to the westward of Bull Run Creek?—A. I should judge to the west; the other side of Bull Run Creek.

Q. Were they on the road from Manassas Junction to Centreville?—A. They were on the road that leads to Centreville.

Q. What portion of his troops did you pass before you met General Porter?—A. I did not pass any of his troops before I met General Porter.

Q. You did not see any of his troops where he was?—A. My impression was that he was in advance of his troops, but the distance I cannot recollect.

Q. He was nearer the point where you turned off towards the warehouse?—A. No; he was quite a distance from that.

Q. Which direction?—A. I passed him; his troops were in motion direct towards Bull Run Creek when I met him. I cannot tell the distance nor time, but a considerable time elapsed before I saw General Porter.

Q. Relatively to the point where you turned off the road to the right to go towards the warehouse, where were General Porter's troops?—A. The point where I first met them, was, as I said, I should judge about a mile from the creek the other side of Bull Run Creek; they were stretched along the road in marching order; the head of the column was directed towards Bull Run.

Q. Did you pass that column before you got to the point where you turned off to the warehouse?—A. Yes, some time.

Q. Were there no troops in the vicinity of the point where you
1146 turned off to the warehouse?—A. No, sir; I didn't see any.

Q. What was the character of the country there?—A. Rather hilly; rocky.

Q. So that you could not see any great distance?—A. I could not positively state as to that. I could see the road.

Q. Did you turn off on a direct road towards the warehouse?—A. That is a mere impression of mine that it was in the neighborhood of the warehouse. But I turned off on a road to the right to meet General McDowell.

Q. Didn't you go down towards Manassas Junction and there turn off to the right to go to the warehouse, going due north?—A. I did not go to the warehouse.

Q. Well, towards it?—A. I did not pass by the Junction.

Q. You need not have passed by the Junction to have done what I am asking about now. What did General Porter do when you gave him that verbal message?—A. I did not wait to see. I rode right on as soon as I got the direction of General McDowell. He told me about where I would find him.

Q. Repeat, if you can, the exact language of that verbal message?—A. It was an order from General Pope to General McDowell to tell General Porter to take General King and move out towards Gainesville, or advance towards Gainesville. That was the purport of the order.

Q. Was not that message sent by you to General Porter for him to take King's division of McDowell's corps and move out towards Gainesville?—A. No, sir. The order was directed to General McDowell.

Q. Are you positive of that?—A. I am very positive of that.

Q. Who gave you that order?—A. That order was given to me in the presence of General Pope by Colonel Ruggles.

Q. How long after breakfast was this that morning?—A. I had not had any breakfast that morning. It was, as I said, I think about 8 o'clock in the forenoon.

Q. Was it not before eight? Was it not half past seven or seven?—A. I should think not as early as that.

Q. Do you recollect having been on any duty before that time that morning?—A. I was not sent on any duty before that; but we had just been on the march. Our headquarters at that time were on Bull Run Creek. We reached Centreville then and commenced to fix up headquarters; and then that order was given to me, I suppose in the neighborhood of an hour or two hours at Centreville, before I was sent.

Q. You had tents there, or did you quarter in a house?—A. We had tents. The general's headquarters were in a house by the roadside. My impression is it was a one-story hut.

Q. Where did you quarter the night before?—A. The night before we bivouacked near Bull Run Creek.

Q. Did you have a tent?—A. No, sir.

1147 Q. Were you up at dawn?—A. I think so; I don't recollect.

Q. It was about an hour or two after you had gotten up that you received this order from General Pope?—A. It was an hour or two after we reached Centreville.

Q. What time did you arrive where you bivouacked?—A. That was after daylight, but I don't recollect the time. It was bright light at any rate.

Q. Do you know when it was daylight at that time?—A. I don't recollect what time the sun rose.

Q. Do you know how many brigades you passed of that corps before you turned off to the warehouse, or how many regiments?—A. I could not say. It was a line of troops stretched along the road in marching order.

Q. Do you know or did you know at the time of the occasion of the sending of this verbal order?—A. I did not.

Q. Do you recollect what you were doing when you were sent upon that order?—A. I was just sitting down, holding my horse just outside of the house where General Pope had his headquarters.

Q. Who called to you and gave that order?—A. Colonel Ruggles.

Q. Do you know whether or not any messenger had arrived at that time from General Porter or General McDowell?—A. No, sir; I do not.

Q. When you delivered this order to General McDowell, what did he say?—A. He received the order. He said, "Tell General Pope I have his order, and have requested General Porter to put General King on his right, that I can have him if I want, if you say so"—referring to General Pope.

Q. To whom did you deliver that reply?—A. To General Pope himself.

Q. What direction did you take in returning to General Pope?—A. I went back to Centreville, and found that the headquarters had moved to the field. I then rode down the Warrenton pike, I believe it was, and found General Pope on what was considered the field. His headquarters were under a large tree.

Q. How long did it take you to go back to Centreville?—A. I had a horse that was considerably disabled—could not move very fast—broken down completely. I rode as rapidly as I could; I could not tell what time I reached Centreville. I rode down the pike. I reached General Pope, I should judge, about the middle of the afternoon.

Q. One or two o'clock; somewhere along there?—A. Later than that.

Q. You stopped some time in Centreville?—A. I did not stop at all. I saw the quartermaster there. He told me where headquarters were.

Q. When did you get anything to eat that day?—A. I did not get anything to eat at all. The body guard made some coffee on the field, and gave me a cup of coffee. That is all I had to eat.

Q. Take this map and locate the position of the warehouse. [Map called the "John H. Piatt map" shown the witness.]—A. I came
1148 down the Warrenton pike. After I got back to Centreville I found General Pope on the field. Between the road and the old railroad his headquarters were.

Q. Mark the point where you saw him on the field with the letter A.—A. That I cannot do.

Q. Mark on the map the point, as near as you can, where the ware house is located—the brick house.—A. I cannot do that. If I had been over the field I would know better, but I have never had it brought to my mind particularly. I recollect that house because it was a prominent point, and I know it was off in that direction. [Witness examines the map.] I would like to see a larger map than that. I can tell on a larger map just about where our headquarters were. I cannot on this map point out the warehouse.

Q. Can you indicate the road which you went over in carrying that dispatch to General McDowell?—A. I don't know. I do not understand the map.

Q. Take your time in looking over it.—A. [Witness again examines the map.] This is the road, I think, where we encamped, this side of Bull Run Creek, not far from the creek; but the point I cannot tell, because we bivouacked.

Q. Mark the point with a letter.—A. I cannot say the distance it was on the other side of Bull Run.

Q. South side or north side?—A. The other side. Whether that is the west side or the south side I don't know.

Q. With reference to Centreville, which side was it on?—A. Bull Run Creek was between that and Centreville.

Q. Between the bivouack and Centreville?—A. Yes, sir.

Q. About there?—A. It may have been in that neighborhood; but I cannot say positively. [Witness indicates a point on the common road, marked "B."]

Q. How long did it take you to move from Centreville down to Bull Run Creek on the common road?—A. From the manner in which I was mounted I should judge rather over an hour.

Q. You met the head of General Porter's column how far south of that?—A. I should judge a mile, or somewhere in that neighborhood; two miles. It was as much as I could do to get my horse in a trot, he was so used up; and sometimes he would stop entirely. That is, if I am right as to the road on the map.

Q. Had you ever been over that road, except that one time, previously?—A. That is all, in the moving of headquarters towards Centreville.

Q. In going on that road towards Manassas Junction, could you see the warehouse at any point?—A. I cannot say that I recollect the warehouse. My impression is you can see it, but I will not be positive.

Q. Have you any recollection as to whether you found the side road leading to it yourself or were you directed there?—A. I did not
1149 go to the warehouse. I think I inquired on the road where General McDowell was of some soldier, and he showed me; said he was off to the right of the road.

Q. How far from the warehouse?—A. I cannot say in regard to the warehouse. I say it was in that direction. General McDowell was not at the warehouse. He was standing outside with a member of his staff.

Q. How far from the warehouse was he?—A. I cannot say.

Q. Was it in sight from the point where he was standing?—A. I cannot say. I had nothing particularly to direct my attention to the warehouse.

Q. Then, in point of fact, you don't really know whether he was near the warehouse or not?—A. I said on the road in that direction towards the warehouse. That was the one prominent point in my mind, and I met General McDowell off the road, near the house, as I recollect.

Q. Are you quite positive it was anywhere near the warehouse that you saw him?—A. As I said before, I cannot say positively as I recollect the warehouse, except that it is my impression that it was in that direction.

Q. Might it not have been between Manassas Junction and the warehouse where you met him?—A. I know that it was before I reached the warehouse that I met him.

Q. But as you didn't go to the warehouse, might it not have been between Manassas Junction and the warehouse that you met him?—A. I think not.

Q. Then the warehouse was between you and Manassas Junction?—A. That is my impression. He was not, as I said, standing near any house.

Q. Was he east of it, or north of it, or south of it, or west of it?—A. He was off of the road, perhaps less than a quarter of a mile.

Q. Where you met him?—A. Yes, sir; on the right of the road.

Q. Relative to the warehouse as you went towards it, was he to the right of it or to the left of it?—A. I cannot say as to the location in

reference to the warehouse. I merely say, I met him on the right of the road as I went towards Manassas.

Q. This is the new road to Manassas Station. [Point marked by the Recorder.] Did you not meet him in the neighborhood of the point indicated as "C" to the right of the road leading from Centreville to Manassas Junction and Manassas Station?—A. I could not swear positively as to that; but I did not pass the station before I met him.

Q. This, I understand, is a new station, but the original junction was before the roads met. If Manassas Junction was at the point marked "D," where the Orange and Alexandria and Manassas Gap Railroads meet, was not the point "C" about the point where you moved off from the right of the road from Centreville to Manassas Junction?—A. It may possibly have been so.

1150 By Mr. MALTBY:

Q. [Map of N. E. Virginia shown to witness.] Look at the point marked Centreville, and trace the road which you came, as near as you can recollect, and find, if you can, the warehouse thereon.—A. This is the route I took. [Road leading from Centreville to Manassas Station, which runs between the points marked on Bull Run as Mitchell's Ford and Blackburn's Ford.]

Q. Will you find the warehouse?—A. I think that is the point. [Witness indicates.]

Q. See if there are any cross-roads in the neighborhood of the warehouse, and whether the point C indicates the warehouse.—A. As far as my recollection goes, the warehouse is some distance between Manassas Junction and Bull Run Creek.

Q. Where would it be in reference to the point C?—A. It would be at this point marked "W" for "Ware."

Q. In the neighborhood of that house somewhere you say you saw General McDowell?—A. In that direction.

By the RECORDER:

Q. How near the road is it?—A. I said I went off the road, I should judge, perhaps, less than a quarter of a mile.

Q. You did not reach the warehouse when you met General McDowell?—A. I don't recollect much about the warehouse; I merely put the warehouse in that direction.

Q. Do you know the difference in scale between the map marked the "John H. Piatt map" and this map of N. E. Virginia?—A. I do not.

Q. Do you consider them to be on the same scale?—A. No, sir; I do not.

Q. Are you positive that the point marked as the warehouse on the map of N. E. Virginia is really the point where the warehouse is located?—A. I am not; I say it was that locality.

Q. Do you recollect whether there was any road leading past the warehouse?—A. My impression is there was. However, I did not take that road, if there was any. I took the road toward Manassas Junction or Manassas Station.

Q. Do you know whether we had any hospital in the neighborhood of Manassas Junction or Station at that time?—A. I never visited it.

Q. This "John H. Piatt map"; what is the distance that you judge to be between the point marked "C" and the point marked "W," as the supposed location of the warehouse?—A. I cannot tell, except by looking at the scale. By the road, I judge——

Q. No; direct across.—A. Right across, according to the scale, I presume it is a mile and three-quarters or two miles, in a direct line across.

Q. How far do you judge the point C, on the map, to be from the point marked as Manassas Station?—A. I am wrong about that, I think. I am wrong about the scale. That distance between C and W is less than a mile.

1151 Q. Now, between C and Manassas Station?—A. About a third of a mile, I should suppose.

Q. And between the point W and Manassas Station?—A. About three-quarters of a mile, or a little less.

Q. By that scale will you make the exact measurement?—A. [The witness measures with the dividers.] By the map the points between C and W are about a mile.

Q. And Manassas Station to W, how much?—A. About the same distance in a direct line.

Q. And between C and Manassas Station?—A. Half a mile, or a little over.

Q. On this map of Northeast Virginia, how far should you judge the warehouse, as marked there, to be from Manassas Station?—A. I should judge it to be about a mile. [Witness applies the dividers.] A little over a mile.

Q. It is a little less, is it not?—A. A little over.

By Mr. MALTBY:

Q. What was the condition of your horse when you left Centreville?—A. He could hardly move—stiff; had not had much to eat; the next day I had to abandon him and get a fresh horse.

The examination of this witness was here closed.

DEPOSITION OF W. P. RICHARDSON.

The following is the deposition of W. P. RICHARDSON (with a letter accompanying the deposition, both received in due course of mail), a witness examined at the instance of the Recorder by means of interrogatories transmitted by telegraph:

MARIETTA, OHIO, *Nov.* 13, 1878.

A. BIRD GARDNER, Esq., *Governor's Island, New York:*

DEAR SIR: Inclosed please find affidavit containing telegrams as requested. They are exact copies of the originals, errors included.

Hoping they are in shape to assist you in ascertaining the truth,

I am, yours, truly,

W. P. RICHARDSON.

DEPOSITION.

THE STATE OF OHIO, *Washington County, ss:*

Personally appeared before the undersigned, a notary public within and for said county of Washington, W. P. Richardson, who, being by me first duly sworn, deposes and says that on the evening of the 15th of October, 1878, he, said affiant, received a telegram of which the following is a correct copy:

"NEW YORK, *Oct.* 15*th*, 1878.

Genl. W. P. RICHARDSON, *Marietta, Ohio:*

Please answer these inquiries by telegram, government rates, collect on delivery, this evening.

First. Please state the ranking command you had on the morning of the twenty-ninth of Aug., eighteen sixty-two.

Second. State your position from which you to action that morning. How far did you advance? What direction did you take? What was the farthest point of your advance? What time did you get there? How long did you remain there? Where was Schenck's division that time when you were at the farthest advance?

Do you know where the battle-field was on the night before of King's division?

Do you know where the Lewis house was? If so, were you there at any time that

day? If so, state when. Did you advance in front of the Lewis house? If so, in what direction?

Do you know anything of a ravine running up toward the Warrenton, Gaines-
1152 ville, and Centreville pike? If so, did you go up that ravine during that day anywhere on that road, and what force and whose did you discover there, if any?

Fully describe your movement. Answer by telegram, retain copies, to which you will be expected to swear.

A. BIRD GARDNER,
Recorder Fitz-John Porter Case, Governor's Island."

To which telegram said affiant says he made answer by telegram, a true copy of which telegram is as follows:

"MARIETTA, OHIO, *Oct.* 15, 1878.

A. BIRD GARDNER, *Recorder Governor's Island, N. Y.:*

I was colonel and in command of 25th O. V. I., 2nd brigade, Schenck's division, Seigle's Corps.

Came on the field the evening of the 28th. Halted on a hill on the south of the road (which I supposed to be the Warrenton pike), at a point east of, and in full view, looking westward, of the ground occupied by King's division during the engagement of that division and Jackson's force on that evening, all of which we saw. Laid there in position until daylight on the 29th.

Moved forward in line of battle, south of the road, early in the morning, slowly; passed over the ground fought on by King's division on the previous evening; saw a few of the dead and wounded. Passed this point about 1 p. m.

Proceeded until we came near the road at the foot of a high hill, on which was a rebel battery.

Supposed we were about to attempt to take it, as we were formed in close column by division. There was at this time a force belonging to our army on our left and seemed to be crossing the road in front of us on our left.

Soon an artillery fire was opened on our left and rear, and we were withdrawn slowly over the ground we had traversed in the morning, to a narrow strip of timber, where we halted. This was perhaps 2 or half past 2 p. m.

The artillery fire on our left and front increased, and we were withdrawn further across the fields to a heavy piece of timber, where we halted and remained until evening, when we were still further withdrawn and placed (as I believe) on the north side of the road in reserve in the rear of our corps. Here we remained during the night and the greater part of the 30th.

The furtherest point westward from where we started on the morning of the 29th reached by us on that day, was at the foot of the hill just described. Our own brigade was where I have stated; the 1st had crossed the road on our right.

I have not been on the ground since the battle, never was on it before, therefore will not say I know where the Lewis house was.

W. P. RICHARDSON."

Said affiant says that the statements made in said telegram, in answer to the questions of said Recorder, are true according to the best of his recollection and belief.

Sworn to before me and subscribed in my presence this 17th day of November, 1878.

CHARLES RICHARDSON,
Notary Public, Washington County, Ohio.

TESTIMONY OF THOMAS L. ROSSER.

Interrogatories propounded to Gen. Thomas L. Rosser, and his answers thereto, at Minneapolis, in the State of Minnesota, on the 14th day of October, 1878.

1st interrogatory. Please state your full name and residence.—Answer. Thomas L. Rosser, Minneapolis, Minnesota.

2d interrogatory. Were you with Major-General J. E. B. Stuart, of the Confederate army, on the twenty-seventh of August, eighteen hundred and sixty-two; if so, in what capacity?—A. Yes, I was in his command, commanding a regiment of cavalry.

3rd interrogatory. Were you at Manassas Junction on that day?—A. I was.

1153 4th interrogatory. Do you know the character of the night? If so, please state it.—A. There was no moon, but it was clear.

5th interrogatory. Do you know where General Jackson's forces were on that night, and what they were doing?—A. Yes; Jackson's command was getting into position along Bull Run, near its crossing the Alexandria and Warrenton turnpike.

6th interrogatory. What did you do, yourself?—A. I was detached from the cavalry corps as a rear guard.

7th interrogatory. Where were you at daylight on the morning of the twenty-ninth of August, eighteen hundred and sixty-two?—A. I was on Jackson's extreme right, with pickets under my command, on the Alexandria and Warrenton turnpike, and other roads leading in from the direction of the Orange and Alexandria Railroad.

8th interrogatory. Do you know where Sudley Church is? If so, where were you in reference to that point?—A. I do; and I was further up stream, and to the west of the church.

9th interrogatory. Did you join General Stuart that morning? If so, state at what time, and narrate what happened.—A. At daylight I moved out, crossing the Alexandria and Warrenton turnpike, and occupied a road leading off to Manassas Junction, a mile or two beyond the turnpike. At this point, about ten o'clock, I was joined by Stuart and his staff. Longstreet's command was coming in in a very forced and disordered march from the direction of Thoroughfare Gap, moving rapidly and straggling badly. My position was taken up with reference to their protection from a gun of the enemy who were in my front. When Stuart joined me, he notified me that the enemy was moving upon our right flank, and ordered me to move my command up and down the dusty road, and to drag brush, and thus create a heavy dust as though troops were in motion. I kept this up at least four or five hours.

10th interrogatory. Did you see Capt. John Pelham, or Major Patrick, or both, that morning? If so, where, under what circumstances, and what did they do to your knowledge?—A. I do not remember Patrick. Pelham came to where I was, late in the day, with some artillery, and was moved out to the right, where he engaged the enemy. There was firing—at this time a cavalry command, with Stuart, moved out and relieved me from my position. I then took position on the extreme right of Longstreet's line, which was then forming.

11th interrogatory. Did you go anywhere with General Stuart? If so, where?—A. I did not.

12th interrogatory. Do you know of any action or affair on the left of General Jackson's lines early in the morning of the twenty-ninth of August, eighteen hundred and sixty-two? If so, what was it?—A. I do; Jackson was more or less engaged all the morning.

13th interrogatory. Did you go with General Stuart in the direction of Hay Market? If so, at what time did you meet any forces? If so, whose, where, and when?—A. I did not go with him.

14th interrogatory. Did you have any cavalry? If so, what?—A. I had a regiment of cavalry, the 5th Virginia.

15th interrogatory. Were you south of the Warrenton, Gainesville and Centreville pike after this? If so, where did you go, what did you do, and by whose orders?—A. I was all the time south of it. I assumed it in the first place without orders, and remained there afterwards by Gen. Stuart's orders.

1154

16th interrogatory. Do you know of any artillery firing south of the pike in the direction of Manassas Junction or Bristoe Station, on the twenty-ninth of August, eighteen hundred and sixty-two? If so, where was it from, what was it directed to, what was its character and result?—A. The horse artillery, as I have stated, under Pelham, directed by Stu-

art, moved out and engaged the Federal forces. It was east of Hay Market, and south of the turnpike. It was directed to a marching column, or advancing column. It was so reported to me by my scouts. They also reported that the column had halted.

17th interrogatory. If you were south of the Gainesville pike did you see any Federal forces advancing from the direction of Manassas Junction or Bristoe? If so, do you know whether any measures or expedients were taken by General Stuart or yourself, or directed to be taken to retard, impede, or prevent such advance, or to divert such forces? If so, please state what they were.—A. Stuart reported the advance of a Federal force, and that led to the dragging of brush as previously related.

18th interrogatory. Do you know whether there was any action on the twenty-ninth of August, eighteen hundred and sixty-two, in the nature of a battle? If so, what was its character, how long did it last, and what was its degree of severity?—A. There was no pitched battle; Jackson's forces were attacked, and Longstreet's forces were more or less engaged after he got up, but I did not consider it a pitched battle.

THOMAS L. ROSSER.

STATE OF MINNESOTA,
County of Hennepin, ss:

Personally appeared before me Thomas L. Rosser, to me personally known, who made oath that the foregoing answers made by him to the interrogatories which they follow were true, and subscribed the same in my presence this fourteenth day of October, 1878.

[SEAL.] EDGAR W. WILSON,
Notary Public, Hennepin County, Minn.

Cross-interrogatories to be propounded to Gen. Thomas L. Rosser, on behalf of the petitioner, Fitz-John Porter.

1st cross-interrogatory. Please mark upon the map (hereunto attached) with a red letter A the various places where you know of your own knowledge your pickets were placed about daylight on the right of Jackson's forces, Aug. 29th, 1862.

2d cross-interrogatory. If you cannot do so, designate the roads which you know of your own knowledge were guarded by your pickets at that time.

3rd cross-interrogatory. Mark with a red letter B the road leading off to Manassas Junction which you say you occupied at daylight a mile or two beyond the turnpike.

4th cross-interrogatory. Mark with red letter C the point where General Stuart joined you with his staff about ten o'clock of 29th Aug., 1862.

1155 5th cross-interrogatory. Mark with red letter D where the forces of Gen. Longstreet were when you first saw them on that day.

6th cross-interrogatory. Mark with the letter E the position of the "few of the enemy who were in my (your) front," against whom you were posted to protect Longstreet's advancing forces, as I understand you to state.

7th cross-interrogatory. Mark with red line and letters F F at each end of the line the distance and road along which your command dragged brush.

8th cross-interrogatory. Did you, yourself, see this dragging of brush?

9th cross interrogatory. How many men were present for duty in your regiment on said 29th August?

10th cross-interrogatory. How many were dragging brush?

11th cross-interrogatory. With a view to getting their opinions as to hour and place of dragging brush on 29th of August, 1862, please state, if you remember the names and addresses of any officers or men now living who were eye-witnesses of such dragging.

12th cross-interrogatory. What time in the day did you begin dragging brush, and when did you end it? State particularly how you fix the time.

13th cross-interrogatory. Draw a red line from the point where you said you met General Stuart when he directed you to drag brush to a place marked New Market, another from the same first-named point to Manassas Station; a third line to point where Milford road runs off at foot of map, and a fourth to Langley's Mills, and then state the position with reference to either of these lines of the Union forces to delude whom you dragged brush as Stuart reported them advancing.

14th cross-interrogatory. Along what road did you understand the Union forces were moving upon our (your) right flank, because of which you were ordered to drag brush? Please mark the road with red letters G G and the position of the Union forces with red bars, ═══.

15th cross-interrogatory. In whose command was Major Pelham; in that of Longstreet or of Jackson?

16th cross-interrogatory. Where were you when Pelham came to you? Mark with red letter H.

17th cross-interrogatory. To what point and in which direction did Pelham "move out to the right" where he engaged the enemy? Mark point with red letter I and direction with red arrow and letter K.

18th cross-interrogatory. How many guns had he with him?

19th cross-interrogatory. In which direction did he fire? Mark with red arrow and letter L.

20th cross-interrogatory. Where were the enemy at whom he fired? Mark with red letter M.

21st cross-interrogatory. What cavalry command relieved you then, and from where did they move out? Mark point with red letter N.

22d cross-interrogatory. Where was your position on extreme right of Longstreet, which was then forming, as you say? Mark this position with red bars and letter O.

23d cross-interrogatory. Do you know of your own observation that Jackson's infantry was engaged all the morning?

24th cross-interrogatory. Have you had your memory refreshed lately? If so, state when, where, and by whom, or what.

25th cross-interrogatory. Have you been over the ground you
1156 speak of since 1862? If so, state when, and if you have examined the topography particularly.

General Rosser will please affix his signature to the map attached to these interrogatories after he has indicated thereon the various points requested.

If he cannot mark the particular points, let him indicate them as nearly as possible.

ANSON MALTBY,
Of Counsel for Petitioner.

Answers of General Thomas L. Rosser to the foregoing cross-interrogatories propounded to him at Minneapolis, in the State of Minnesota, on the 5th day of November, 1878.

Answer to 1st cross-interrogatory. My pickets were posted along the line indicated by the letter A marked on the map, as requested, on the date given.

A. to 2d cross-interrogatory. My reply to the first question answers that.

A. to 3d cross-interrogatory. My position was at the point which I have marked on the map with the letter B 1, and my pickets were extended out on the roads indicated by the other letters B, which I have marked, as requested.

A. to 4th cross-interrogatory. It was at the forks of the roads which I have marked on the map with the letter C.

A. to 5th cross-interrogatory. I have marked the points with the letters D, as near as I can on this map.

A. to 6th cross-interrogatory. They run in front of my pickets at the points I have marked on the map with the letters E.

A. to 7th cross-interrogatory. I have marked the map as requested.

A. to 8th cross-interrogatory. I did.

A. to 9th cross-interrogatory. It was somewhere between three hundred and four hundred.

A. to 10th cross-interrogatory. There was a large detail—several companies—in the neighborhood of a hundred.

A. to 11th cross-interrogatory. The regiment was subsequently so badly cut up that I do not now remember the name of a single living officer who was present, unless it may be Hon. B. B. Douglas, now a member of Congress from Virginia.

A. to 12th cross-interrogatory. We began it, as near as I can remember, about ten o'clock in the morning. It must have been in the neighborhood of one o'clock when we quit. I state the time from my recollection.

A. to 13th cross-interrogatory. I have marked the lines on the map as requested. The forces I desired to delude were reported to be in the direction of Manassas, between the points I have previously marked on the map with the letters E and Manassas.

A. to 14th cross-interrogatory. I only understood the Union forces were moving as stated. I did not see them, and cannot locate their position.

A. to 15th cross-interrogatory. Major Pelham was chief of artillery with Stuart, under Jackson.

A. to 16th cross-interrogatory. I was near the point I have marked with the letter H, about at the point marked C.

1157 A. to 17th cross interrogatory. I have marked the direction in which he went. I do not know to what point he went.

A. to 18th cross-interrogatory. It is my impression he had only two.

A. to 19th cross-interrogatory. I did not see him fire. I heard artillery in the direction he took.

A. to 20th cross-interrogatory. That I could not tell.

A. to 21st cross-interrogatory. It is my impression that I was relieved by General Bev. Robinson. They came in from the direction of Gainesville. I at once left upon being relieved.

A. to 22d cross-interrogatory. I have marked the map as requested. The point near Brewer's Spring.

A. to 23d cross-interrogatory. I know there was more or less firing all morning. I did not consider it a regular engagement. There was no battle.

A. to 24th cross-interrogatory. I have not. I have not even read the proceedings of the present trial.

A. to 25th cross-interrogatory. I have not been on the field since that day. I had previously examined the topography of the country particularly, and made a map of the first battle of Manassas.

THOS. L. ROSSER.

STATE OF MINNESOTA,
County of Hennepin, ss:

Personally appeared before me Thomas L. Rosser, to me personally known, who made oath that the foregoing answers made by him to twenty-five cross-interrogatories, to which they are affixed, were true, and subscribed the same in my presence, this 5th day of November, 1878.

FERD. H. GWINN,
Notary Public, Hennepin County.

Witness:

———— ————.

1160 THIRTY-SEVENTH DAY.

WEST POINT, N. Y.,
January 2, 1879—10 a. m.

Having adjourned from December 18, 1878, to this date, the Board met pursuant to adjournment. Present, Maj. Gen. John M. Schofield, U. S. A., Brig. Gen. A. H. Terry, U. S. A., Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

The RECORDER said: May it please the Board, I expected to have a witness here this morning, but he has been delayed by the storm. I have a dispatch from him, in which he says he will be here by the eleven o'clock train. I have some documents which I desire to offer. The first is a telegram from myself to Colonel Ruggles, assistant adjutant-general, with reference to Captain Piatt, who was a witness during the recess of the Board, and his reply thereto.

Mr. MALTBY. I do not see why they should be put in.

The RECORDER. Captain Piatt, a witness during the recess, I should state, testified to having received certain instructions from Colonel Ruggles, chief of staff to Major-General Pope. Preliminary to subpœnaing Colonel Ruggles to attend before the Board, I sent him some telegrams on this subject. Probably it will be sufficient merely to state his reply rather than to put it on the record.

Mr. CHOATE. If any part of the telegrams is to be put on the record they had better all be read.

The RECORDER. Very well.

The following telegrams were then read:

GOVERNOR'S ISLAND, 30*th November*, 1878.

To Major GEORGE D. RUGGLES, *St. Paul, Minnesota:*

Captain John S. Piatt testifies in Porter case that you sent him to McDowell Friday morning, twenty-ninth August, with Pope's orders for Porter to take King's division

towards Gainesville. Is this so? Was not the verbal message to Porter from Pope not to McDowell? When did you send Piatt? What instructions did you give him? Please telegraph fully.

GARDNER, *Recorder.*

SAINT PAUL, *December 2d*, 1878.

Major A. B. GARDNER, *Governor's Island, New York:*

Several officers not belonging to headquarters, and I think some enlisted men, carried orders on 29th and 30th August, 1862. The names of many of these officers, who were but slightly known to me then, have since escaped me. I do not at this time remember the name of Captain John S. Pratt, and am, therefore, unable to answer the inquiries contained in your telegram. I have a general recollection that some orders for General Porter were to be shown to General McDowell by messengers carrying them. I have no reason, therefore, to doubt the accuracy of Captain Pratt's testimony.

RUGGLES,
Assistant Adjutant-General.

Official copy respectfully furnished by mail.

GEO. D. RUGGLES,
Assistant Adjutant-General.

1161 GOVERNOR'S ISLAND, 3 *December*, 1878.

To Major RUGGLES, *St. Paul, Minnesota:*

Telegram received. Mine wrongly delivered. For John S. Pratt, telegram should read John H. Piatt. Please correct and answer. He was additional aide-de-camp with Pope.

GARDNER, *Recorder.*

HEADQUARTERS DEPARTMENT OF DAKOTA,
St. Paul, Minn., Dec. 4th, 1878.

To Major A. B. GARDNER, *Governor's Island, New York:*

I remember Captain Piatt perfectly, but do not remember whether I did or did not send him, the hour of the day at which he may have been sent, nor the special instructions that I may have given him at the time.

RUGGLES,
Assistant Adjutant-General.

Official copy respectfully furnished by mail.

GEO. D. RUGGLES,
Assistant Adjutant-General.

GOVERNOR'S ISLAND, 5*th December*, 1878.

To Major RUGGLES, *St. Paul, Minnesota:*

Telegram received. Did you, on Friday morning, send Captain Piatt to McDowell, directing him verbally to order Porter to go to Gainesville and take King's division with him? Was not the order direct to Porter to go there with King? This statement of Piatt is directly at variance with the joint order of Friday morning, sent McDowell and Porter and noted as General Order number five, in which Pope mentions the orders he has sent. Original despatch-book shows joint order in your handwriting. Piatt's statement must therefore be erroneous.

GARDNER, *Recorder.*

HEADQUARTERS DEPARTMENT OF DAKOTA,
St. Paul, Minn., December 5, 1878.

To Major GARDNER, *Governor's Island, New York:*

Telegram received. I cannot say that I did send Captain Piatt to General McDowell Friday morning directing him verbally to order Porter to go to Gainesville and take King's division with him. I cannot say that I did not send him with such a message. In short, I don't recollect the first thing about it one way or the other. It is sixteen years since these orders were given and carried, and I am unable, from any recollection or information in my possession, to state whether the order, written or verbal, to General Porter to go to Gainesville and take King's division was sent direct or through General McDowell.

RUGGLES,
Assistant Adjutant-General.

Official copy respectfully furnished by mail.

GEO. D. RUGGLES,
Assistant Adjutant-General.

CONSOLIDATED MORNING REPORT OF 5TH ARMY CORPS, COMMANDED BY MAJOR-GENERAL F. J. PORTER.

[Indorsement.]

ADJUTANT-GENERAL'S OFFICE,
Washington, Nov. 5, 1878.

Official copy. Original received at this office in 1865 with records of discontinued commands.

SAM. BRECK,
Asst. Adjt. General.

THIS BLANK WILL BE USED FOR CORPS, DIVISIONS, BRIGADES, AND REGIMENTS

DATE, August 31st, 1862.

STATION	COMMANDING OFFICER.	TROOPS
1	2	3

PRESENT. — FOR DUTY — ON SPECIAL, EXTRA, OR DAILY DUTY. — SICK. — IN ARREST OR CONFINEMENT.

ABSENT. — BY AUTHORITY.* — WITH LEAVE. — SICK. — WITHOUT AUTHORITY.

PRESENT AND ABSENT.

ALTERATIONS.

PRESENT FOR DUTY EQUIPPED. — INFANTRY. — CAVALRY. — ARTILLERY. — HORSES. — GUNS.

REMARKS.

			Numbers of columns for reference to notes	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
Newport News, Va.	Major-General F. J. Porter ..	Commanding corps							1	3		1									1														1		6																	
	Colonel H. J. Hunt	Com'd'g art'y reserve								3	17	80	131					28		3	182	80	1,714								15	100	2,191	2,201	2,532	1	22																	
	Major-General Morell	Com'd'g division					176	3	11	288	42	1,159					5	224	5	19	6,731	247	6,278								23	963	592	13,650	14,214	9,913	1,720	121																
	Brig. General Sykes	Com'd'g division																																	7,500		7,300															
	Brig. General Seymour	Com'd'g division																																	10,746		10,243															
		Total							4	17	316	750	1,290					259	5	22	7,217	327	7,992								38	1,063	784	15,841	16,757	30,403	1,721	18,167																

In red ink in the original

Headquarters: 5TH ARMY CORPS.
Station: NEWPORT NEWS, VA.
Date: *August* 31, 1862.

(Signed) FRED. T. LOCKE
Asst. Adjutant-General

Commanding.

This document is the one referred to by Adjutant-General Townsend (page 1125, Board Record) as giving the total commissioned officers and enlisted men *present for duty*, but not including others present, August 31, 1862, in the 5th army corps. The date, however, should be August 21, 1862. On this return Sykes' division and Reynolds' division (then under Seymour) are not accounted for in the column of present for duty.

F P—face p. 1079.

The RECORDER said: The next document which I desire to offer, and which I have received since the last adjournment of the Board, is the consolidated morning report of Morell's division of the Fifth Army Corps, dated Newport News, Va., August 31st, 1862. That is evidently an error—August 31—because we know that Morell's division was not there. This is probably the tri-monthly report of August 21.

Mr. CHOATE. I do not think that should be offered with that discrepancy of date.

The RECORDER. That is the way it appears on the records of the Adjutant-General's Office. I am not responsible for the discrepancy. I think that must be a clerical error.

Mr. CHOATE. We would like to know the object of the Recorder in offering this.

1162 The RECORDER. We know the movements from Newport News up, and that General Morell had his division well in hand. This is a report from the files of the Adjutant-General's Office of the condition of that division nine or ten days before the battle.

The PRESIDENT OF THE BOARD. Does it appear when that return was filed?

The RECORDER. Yes, sir; it is upon the return.

The PRESIDENT OF THE BOARD. How does it compare in effective strength with any other return?

The RECORDER. It shows a great deal more.

Mr. CHOATE. There is nothing in it indicating the number of the force that left Newport News. We do not suppose there is any substantial difference in the evidence as it now stands as to the forces with which General Porter joined General Pope on the 26th August. How that has any relation to the matter I do not see. It seems to me that putting this into the record will only be introducing endless confusion into the case unless it is connected with proof of that force leaving Newport News under General Porter. There is no pretense that any such thing as that took place.

The PRESIDENT OF THE BOARD. The Board see no objection to the admission of the document.

The report appears opposite this page.

The RECORDER said: I have a letter from the Rev. Franklin Stringfellow, of Virginia, who was a witness before this Board, and who, the Board may recollect, in the middle of his testimony found that he had confounded the events of the 29th with those of the 30th. He afterward addressed me this communication, part of which is upon personal matters and part apparently meant for the Board. In justice to him I have thought that I ought to read those portions that he seems to have intended for the Board.

The Recorder then read as follows:

SUBLETT'S TAVERN P. O., VA.,
October 30th, 1878.

Major A. B. GARDNER:

DEAR SIR: Your letter written 15th October has just been received.

The RECORDER. That was a letter written before he testified.

The Recorder then proceeded to read further, as follows:

I am still surprised that one who knows so little about the particular things under discussion should be called on as a witness in such an important case. I had never read a single word about the trial, knew nothing about the state of the case, and I may honestly say cared nothing for either party. Hence I had never reviewed in my own mind the events so as to give an intelligent and correct account. The little that I did state and hold as fixed facts may not even be correct. I am satisfied that I was mis-

taken in several particulars which I thought that I remembered quite distinctly. Since my attention has been called to this subject I find that the memory will not do to trust to. * * * I should dislike exceedingly to have any argument built upon any statement made from my memory, whether favorable to the one party or the other. I have seen no one acquainted with the subject, nor have I read a word from book or paper on this subject, since I saw you; but my own reflections have led me to feel that everything is too dim and disjointed to rely upon as absolutely correct. In my mind I see columns of infantry pressing forward to a given point; a cloud of dust seems to rise above them and they float away in the dust. They vanish. I see them again throwing forward skirmishers and advancing for a charge. I can hear the yells of the men, the hissing bullet, the bursting shell, and the roll of musketry, but when the dust is cleared away I see a vacant field. A dead man is seen here and there and the wounded are calling for help, but where are the contending armies? They are gone. It is too much like a troubled, broken dream for me to testify anything about it after sixteen years. I hope, then, that my testimony may be dropped from the list, and that the matter may be settled on clearer evidence than I can give.

1163 The RECORDER. The next document that I have to offer is a return of the corps of Maj. Gen. N. P. Banks, dated the 31st of August, 1862, and received at the Adjutant-General's Office November 12, 1862, being a return of the Second Corps of the Army of Virginia.

Mr. CHOATE. That has no reference to this case.

The RECORDER. Do you object to its admission?

Mr. CHOATE. I do not see what bearing it has. General Banks is not on trial here and never has been. It seems to me to be wholly immaterial.

The RECORDER. General Banks reported as present for duty on the 31st of August commissioned and enlisted men, 10,361. He was close to the petitioner on the 29th of August, 1862. From the petitioner's own dispatches introduced here we have seen that he and General Banks were to be in communication, or were even in communication that very morning. This petitioner has, as the Board knows, laid considerable stress upon the fact that Brig. Gen. King's division, under General Hatch, was taken away from him and he was prevented from doing anything in the position in which he was placed; that he had not force enough near him. While all the time, directly on his flank, close to him, in easy communication at Bristoe, and even between Bristoe and Gainesville, was Major-General Banks's force of about 10,000 men, as one of the witnesses on this investigation testified. It also corroborates some of the witnesses as to the time that Major-General Banks's corps arrived at Bristoe Station, for the document, as is usually required, states on its back the movements of the greater portion of those troops. During the recess I had occasion to introduce a witness whom the Board did not hear, Colonel Dodson, for the purpose of showing that on that very 29th of August Major-General Banks moved up a corps of observation, on the road from Bristoe to Gainesville, in order that the movement of Wilcox's division of Longstreet's corps, from the north of the Warrenton pike, between 4 and 5 p. m., down to the neighborhood of D. R. Jones's division, should be explained. The Board will remember additionally that Piatt's brigade of Sturgis's division was attached to a command of the petitioner, and that it was to leave, as appears by the dispatches on file, Bristoe Station, after communication with General Banks had been established.

Mr. BULLITT. I would like to inquire of the Recorder whether he means to offer that as showing that General Banks had under him at Bristoe Station 10,000 men—whether he offers it as proof of that fact.

The RECORDER. I offered it for the purposes I have stated.

Mr. BULLITT. I think we have a perfect right to ask the Recorder with reference to what he expects to prove by the piece of testimony which he proposes to introduce. I think the Board have a right to

know from him whether he expects to show that General Banks's corps was, in any sense, under the control of General Porter on the morning of the 29th. I submit that unless the Recorder believes that he can fairly sustain those two points, this should be rejected as irrelevant. If he says that he expects to use it for those two purposes, then, of course, we have not a word to say—first, to show the number, and, second, that this force was in any sense under Porter's control on the morning of the 29th. If he offers it for those two purposes, or either of them, I suppose we will not have a word to say in objection.

The RECORDER. I have stated the purpose for which I offered it. I hardly propose, at this late day of this case, to go to the counsel on the other side for the purpose of ascertaining reasons why I should or should not introduce a document.

1164 Mr. BULLITT. I think, at this late day, evidence should not be offered which is not clearly relevant to this case. I submit to the court that the Recorder has not shown any grounds upon which it is relevant or material.

The PRESIDENT OF THE BOARD. Have the orders of General Pope to General Banks, of that day, appeared in the record?

Mr. BULLITT. I think they have.

The RECORDER. Here is what we find in the petitioner's opening statement, page 13, in General Pope's order, dated Headquarters, Army of Virginia, Warrenton Junction, August 27, 1862. After giving a number of instructions to Maj. Gen. Banks, General Pope says:

> If the enemy is too strong before him, before the bridges can be repaired, he will be careful to destroy, entirely, the train, locomotives, and stores before he falls back in the direction of Manassas Junction. He is, however, to understand that he is to defend his position as long as possible, keeping himself in constant communication with Maj. Gen. Porter, on his right.

Mr. BULLITT. What date was that?

The RECORDER. The 27th. That was the order that you published, of Major-General Pope to his Army, to the petitioner and others.

Mr. BULLITT. Here is an order dated August 28, 1862, 10.40 a. m. I don't know whether it is in evidence or not. This is from Colonel Ruggles or from General Pope.

The RECORDER. That has not been offered in evidence yet.

Mr. MALTBY. It has, I suppose, been in evidence; because that book has been in evidence.

The RECORDER. I do not know who put it in evidence.

Mr. MALTBY. We did.

The RECORDER. When?

Mr. MALTBY. We offered it on the closing day.

The RECORDER. Will you show it on the record?

Mr. BULLITT. If the Board will allow me a moment; the question as to whether this paper which the Recorder has offered in evidence is admissible or not must depend, as it seems to me, on the question whether this command was subject to General Porter. Of course we may get into a great many issues which are irrelevant. Let me say in reference to this paper, that I hold in my hand a paper signed and certified by the Adjutant-General, dated December 16, 1878, in which Banks's corps, for August, 1862, shows as present for duty at that time, in General Williams's division, 1,561; General Augur's division, 1,509—in all, 3,070 men. That return, as I understand, indicates 10,000 men. You observe that we get to an issue at once, whether there were 10,000 or 3,000; that is a difference of 7,000 men. I do not suppose that the Board want to try that issue here. Yet if General Banks was in any way subject to the petitioner's command, I agree that the number of men becomes im-

portant. I think that before he offers that in evidence the Board very properly have a right to ask the Recorder if there are orders to General Banks from General Pope applying to his conduct at that time.

The RECORDER. I am surprised to find that the gentleman is so desirous of instructing me as to my method of procedure. The manner of the argument of the gentleman, as I have just heard it, is not such as we usually find in the higher courts of law, in my judgment. I have offered a document and it is before the Board. If there is anything to contradict the document, that can be offered afterwards.

Mr. CHOATE. We disavow any purpose of attempting to instruct Major Gardner.

The PRESIDENT OF THE BOARD. The Board are not able at this
1165 time to see that this return can have any bearing on the case as it now stands. Yet we have admitted other documentary evidence of a similar character with a view to permitting counsel on either side to make such use of it as they may be able to in connection with other evidence. It will be for the Board to judge finally whether it is of any value or not. With that view, we see no objection to admitting it.

The return appears opposite this page.

The RECORDER. The next document which I desire to offer is a tabular report of the casualties in Brigadier-General Sykes's division, August 29 and 30, 1862. We have evidence here as to the losses in Morell's division already on record, and the Adjutant-General writes to me that there are no reports on file in that office of casualties by Morell or by the brigade commanders of Morell. But we have that in the form of oral evidence, and this is introduced as to Brigadier-General Sykes's losses.

The petitioner made no objection. The tabular report is as follows:

Tabular report of casualties in Sykes's Division, August 29–30, 1862.

	Commissioned officers.			Enlisted men.			Total.			Grand total.
	Killed.	Wounded.	Missing.	Killed.	Wounded.	Missing.	Killed.	Wounded.	Missing.	
Third United States Infantry	.....	2	.....	5	15	25	5	17	25	47
Fourth United States Infantry	.....	1	.....	3	13	1	3	14	1	18
Twelfth United States Infantry	1	.....	.....	4	32	5	5	32	5	42
Fourteenth United States Infantry, first battalion	.....	1	.....	14	91	23	14	92	23	129
Fourteenth United States Infantry, second battalion	.....	4	.....	3	30	11	3	34	11	48
First United States Infantry	.....	.....	.....	1	6	4	1	6	4	11
Second United States Infantry	1	1	1	1	63	7	2	64	8	74
Sixth United States Infantry	.....	3	.....	6	26	6	6	29	6	41
Tenth United States Infantry	.....	.....	.....	1	11	.....	1	11	.....	12
Eleventh United States Infantry	.....	.....	.....	4	15	13	4	15	13	32
Seventeenth United States Infantry	.....	.....	.....	5	34	9	5	34	9	48
Fifth New York Volunteers	3	7	.....	76	163	48	79	170	48	297
Tenth New York Volunteers	1	2	2	22	63	25	23	65	27	115
Battery I, United States Artillery	.....	.....	.....	.....	2	.....	.....	2	.....	2
Battery K, United States Artillery	1	.....	.....	.....	.....	.....	1	.....	.....	1
	7	21	3	145	564	177	152	585	180	917

GEO. SYKES,
Brigadier-General, commanding Division.

ADJUTANT-GENERAL'S OFFICE, *November* 19, 1878.

Official copy.

SAM. BRECK,
Assistant Adjutant-General.

RETURN OF THE 2ND CORPS, ARMY OF VIRGINIA, COMMANDED BY MAJOR-GENERAL N. P. BANKS, FOR THE MONTH OF AUGUST, 1862.

[This return to be used for military divisions and departments.]

... Adjutant-General of the Army, one for the immediate commander, and one to be retained.

PRESENT. ABSENT. PRESENT AND ABSENT. ALTERATIONS SINCE LAST MONTHLY RETURN. MEMORANDA.

COMMISSIONED OFFICERS. ENLISTED MEN. WITHIN THIS DEPARTMENT. WITHOUT THIS DEPARTMENT. COMMISSIONED OFFICERS. ENLISTED MEN. GAIN. LOSS.

| Names of commanders. | Stations. | Present for duty. | Present on special duty. | Sick. | In arrest or confinement. | Total present. | For duty. | On extra or daily duty. | Sick. | In arrest or confinement. | Total present. | Commissioned officers. | Enlisted men. | Commissioned officers. | Enlisted men. | Total absent. | General officers. | Aids-de-camp. | Adjutant-General's Department. | Inspector-General's Department. | Judge-advocate. | Quartermaster's Department. | Subsistence Department. | Medical Department. | Pay Department. | Engineers. | Ordnance. | Signal Corps. | Chaplains. | Regimental field officers. | Regimental staff officers. | Captains. | Subalterns. | Total commissioned. | Non-commissioned staff of regt. | Ordnance sergeants. | Commissary sergeants. | Hospital stewards. | Sergeants. | Corporals. | Musicians. | Artificers, wagoners, farriers, and blacksmiths. | Privates. | Total enlisted. | Aggregate. | Aggregate present and absent. | Commissioned officers. | Enlisted men. | Aggregate. | Commissioned officers. | Enlisted men. | Aggregate. | No. of recruits ... | Recruits received from general depot. | Recruits received from enlistments in regts. | Aggregate gain by promotion and re-enlistment. | Aggregate ... | Aggregate ... | Serviceable. | Unserviceable. | Heavy. | Field. | Mounted. | No. of ... |
|---|---|---

The RECORDER. The next document which I desire to offer is the one that the Board assented to originally, when Mr. Bowers, the witness from New Martinsville, W. Va., was examined, and whose history was gone into on the cross-examination from his cradle to that time. He was a scout, and was arrested under the belief that he was a spy from the Confederate army. I wrote to the Adjutant-General for a
1166 copy of the records, and I have it here. Mr. Bowers is one of the leading lawyers of West Virginia.

Mr. MALTBY. Is that in evidence?

The RECORDER. Well, according to the ruling of the Board, whatever a commissioned officer says is evidence. He felt somewhat chagrined over the character of his cross-examination, and accordingly I offer this as explanatory.

The record referred to and the letter of transmittal are as follows:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, October 21, 1878.

SIR: Referring to your communication of the 16th instant, requesting, by direction of the Advisory Board in the Fitz-John Porter case, copies of certain documents relating to the arrest as a spy of Basil T. Bowers, his confinement at Camp Chase, Ohio, and his subsequent release on discovery of his real character as a Union soldier, &c., I have respectfully to inclose herewith copies of such papers on the subject as are found with the records of prisoners of war filed here.

No record of the letter from Hon. J. A. Bingham, referred to by you, can be found.

Very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

Maj. A. B. GARDNER,
Judge-Advocate, U. S. A., Recorder Advisory Board, &c.,
Governor's Island, N. Y. H.

The records of Camp Chase Ohio Military Prison, on file in the Adjutant-General's Office, Washington, D. C., show:

* * * * * * *

B. Thomas Bowers.—Spy. Harrison County, Ohio, received (at said prison) Dec. 20, '62, and released January 8, '63, "on taking the oath of allegiance."

* * * * * * *

HEADQUARTERS CAMP CHASE,
Dec. 20, 1862.

COLONEL:— * * * * *

III. B. T. Bowers, late 2nd lieut. in Co. E, 2nd Va. Federal Infantry, was arrested on the 14th December by the 106th N. York Inf. in Virginia. He had been a scout for General Milroy; and after being at home in Harrison County, Ohio, was proceeding to rejoin Milroy's command when arrested. Had provided himself with a Confederate uniform, which no doubt led to his arrest.

IV. With him was William B. Jones, a recruit, going to join a Pennsylvania regiment, in which he had friends. He lately belonged to the 87th Reg't O. V. I. (3 mos. troops), and shows me full evidence of his loyalty.

No doubt both of these men were arrested under the supposition that they were spies because of the uniform. They are charged as spies.

I unhesitatingly recommend their discharge.

Very respectfully,

PETER ZINN,
Major Batt'n Gov's Guard, Com'd'g Post.

Col. W. HOFFMAN, *Com. Gen'l of Pris.*

HEADQUARTERS 1ST BATTALION GOV'S GUARDS,
Camp Chase, December 30th, 1862.

COLONEL: In support of my recommendation in the case of prisoner B. T. Bowers, dated the 20th inst., I respectfully forward herewith an official communication from

Brig. Gen'l R. H. Milroy, com'g at Cheat Mountain, Petersburg, Va., concerning him, and just received.

I am, colonel, very respe't'y, your obedient servant,

PETER ZINN,
Major 1st Battalion Gov's Guards, O. V. I., com'd'g Prisoners, Camp Chase.

Colonel W. HOFFMAN,
Commissary Gen'l of Prisoners, Washington, D. C.

1167

H'D Q'R'S C'H'T M'T. DIV'S.,?
Petersburg, Va., Dec. 27, 1862.

Major PETER ZINN, *Com'd'g C'p Chase, Ohio:*

SIR: By a letter just rec'd I am nformed that B. T. Bowers is a prisoner in your charge, and was captured as a rebel spy at or near Greenland Gap, Va.

Bowers served in my old brigade for over a year as an act. l't in Johnson's battery, 12th Ohio, is well known to me as a thorough-going Union man, and a good and efficient soldier. He should be released at once.

At request of Brig Gen'l R. H. Milroy.

Very truly, yours,

JNO. O. CRAVENS,
A. D. C. and A. A. A. G.

OFFICE OF COMMISSARY GENERAL OF PRISONERS,
Washington, D. C., January 5, 1863.

Comm'd'g Officer, Camp Chase Prison, Columbus, Ohio:

SIR: On the representation of Brig. Gen'l R. H. Milroy, com'd'g C'h't M't. Div's., that B. T. Bowers, a prisoner at Camp Chase, who was captured as a rebel spy, is a thorough-going Union man and good soldier, having served under him for over a year as act. lieutenant of a battery, you will release him on his taking the oath of allegiance.

Very respectfully, your ob'd't serv't,

W. HOFFMAN,
Col. 3d Inft'y, Com'g Gen'l Pris.

Official copies.

E. D. TOWNSEND, *Ad'j't Gen'l.*

AD'J'T GEN'L'S OFFICE, *October* 21, 1878.

The RECORDER. I next offer a letter from the Hon. Edwin M. Stanton to Major-General Halleck, General-in-Chief, for information as to what orders had been given for the movement of the Army of the Potomac from James River, and whether or not it was obeyed with promptness, according to its purport, and as to what orders had been given for the movement of Franklin's Corps, and whether it was obeyed as promptly as the national safety demanded, and copies of the orders referred to in the inquiry, accompanied by a letter of transmittal from the Secretary of War.

Mr. CHOATE. I would like to ask whether it is proposed to offer this alone, or whether it is one of a series of which this is only the introduction?

The RECORDER. That is one of a series, to be followed by the report of Major-General Halleck of August 30, 1862, on that inquiry of the Secretary of War as to the then alleged failure of the commanding general of the Army of the Potomac, from his headquarters in Alexandria, Va., to send forward the Sixth Corps, and the failure of the commanding officer of the Sixth Corps to move to General Pope's assistance before the two days' battles were begun or ended.

Mr. CHOATE. Then we should like again to ask the Recorder his object in offering this testimony. It is something new—the introduction of the movements of the Sixth Corps and charges against the commander of the Sixth Corps. It seems to us to be entirely foreign to the inquiries before this Board. While we may not be disposed to object to it, I think we ought to have some intimation from the Recorder as to how he regards it as relevant or material. What inquiries the Secretary of War

may have been setting on foot on the 28th of August, which is prior to the principal events involved in this inquiry, seems very far out of the present case.

The RECORDER. Major-General Pope has been indirectly, in 1168 fact I may say directly, brought before this Board, he being the commanding general of the Army of Virginia, in the character of having by his plan of campaign caused disaster and failure to the Union cause at that time. If this investigation had been confined exclusively to what the petitioner did or did not do under his specific orders of the 27th of August, 1862, or the 29th of August, 1862, an objection on the part of the counsel might possibly be pertinent. But we have evidence here, beginning with the petitioner's opening statement, as to the entire transactions of that campaign, so far as General Pope and his corps commanders are concerned. At one minute it is desired to test the recollection of a witness; at another it is desired to illustrate a narrative, and for this purpose and for that purpose, incidentally, the record is an illustration of detached portions of General Pope's campaign, so far as he is concerned, for the purpose of leaving in the condition that, when one reads it without knowing all the circumstances, he will be unable to see the purport of some of the orders that have been introduced here. On page 88 of his opening statement the petitioner has printed his dispatch No. 19, dated at Warrenton Junction, August 27, in which he says:

> Everything here is at sixes and sevens, and I find that I am to take care of myself in every respect.

He then italicizes the next sentence:

> *Our line of communication has taken care of itself in compliance with orders.* The Army has not three days' provisions. The enemy captured all Pope's and other clothing; and from McDowell the same, including liquors. No guards accompanying the trains, and small ones guard bridges. The wagons are rolling on, and I shall be here to-morrow. Good night.

That allusion has reference to the fact that Jackson came in at Manassas Junction in the right rear of our Army under General Pope, and destroyed the supplies that he had prepared there for the Army. In dispatch No. 8, on page 84, he inquires of General Burnside as to his movements—

> Does General McClellan approve?

In dispatch No. 20, on page 89, he says:

> We are working now to get behind Bull Run, and I presume will be there in a few days if strategy don't use us up. The strategy is magnificent, and tactics in the inverse proportion.

In dispatch No. 24, on page 92, he says:

> I hope Mac's at work and we will soon get ordered out of this.

In his opening statement on page 20, he said:

> My object was to convey to General Burnside the exact truth, and deeply impressed as I was with the fatal results likely to ensue from the mistakes which I thought were being made, I intended to convey those impressions to General Burnside, in order that the evils apprehended by me might be guarded against if possible.

On page 76 he refers to the dispatches that General McClellan sent him, to which he replied. On page 80 he attempts to quote from the Judge-Advocate-General, as follows:

> It should likewise be borne in mind that the transfer of the Army of the Potomac, once begun, was a movement of extreme peril, and that extraordinary efforts on the part of all engaged in it were prompted, not only by those high considerations of patriotism which must be *supposed* to have been present, *but also by the equally urgent instincts of self-preservation.*

He says that the Judge-Advocate-General perverts his motive in that. On page 98 in a dispatch from Centreville, August 31, to "My dear General McClellan," he says:

> We were driven from the field, and here we are.

1169 On page 100 of the same opening statement, we have General McClellan's dispatch to him and his reply to General McClellan. On page 102, we have General Pope's preliminary statement to the President in dispatch No. 55. My object in introducing this is to show that Major-General Franklin, of the Sixth Corps, had received orders on the 26th of August, 1862, in connection with other documents that I have here, to march from Alexandria by way of Centreville towards Warrenton to join General Pope. We know that if he had done so at the time mentioned in these orders General Jackson would not have been able to get in the rear of General Pope at Manassas Junction. We know that one brigade of that corps was shoved up there under General Taylor, and General Taylor lost his life. I offer those dispatches, including the report of Major-General Halleck, of the 30th of August, 1862, showing why General Pope was not supported, and the dispatches and orders that were sent, and the replies from the commanding general of the Army of the Potomac, as to the reasons of the failure to come to General Pope's assistance.

Mr. CHOATE. We had no retainer from General Franklin, and it is not our business to defend him. It seems to me proper to ask the Board whether they propose to open the door to this inquiry, or to anything that may take the shape of a trial of General Franklin, or of any other person with the Army of the Potomac. The precise document which the Recorder is offering is a letter from Secretary Stanton to General Halleck, commander-in-chief, dated August 28, 1862, making four specific inquiries. The first is as to the date of the order at which General McClellan was commanded to move from the James River; second, whether that order was or was not obeyed, according to its purport, with promptness and dispatch; third, what order has been given recently for the movement of Franklin's corps and whether it was obeyed; and fourth, calling for copies of the orders. The Recorder proposes to offer with it what I have not seen, the reply of General Halleck to this letter, dated August 30. Not, as the Board will notice, coupled with any proof or offer of proof that either of these documents was ever brought to the knowledge of General Pope or General Porter. Now, if this letter of August 28th was on that day, or before the action of the 29th and 30th, brought to the knowledge of General Porter or even of General Pope, or if the answer was, it might have some direct or indirect bearing upon the questions which you are called upon to solve. But how can it have any such bearing in the absence of any connection of either of those generals with it? It, of course, opens the door for what may lead to a very considerable amount of evidence in regard to the Army of the Potomac, in regard to General McClellan, and in regard to General Franklin, all of which, so far as we could gather heretofore from the suggestions which have been made by the Board, it was their purpose to exclude entirely as wholly foreign to this investigation. I do not know what the reply of General Halleck was on the 30th of August. But suppose it was in the highest degree inculpatory of the Army of the Potomac and all parties concerned in it, what has it to do with the question whether on the 27th of August General Porter was guilty of disobedience of the order of that day, or whether on the 29th of August he was guilty of disobedience of the order of that day? I do not think we

should object to the introduction of this evidence in the interest of General Porter, but it does seem to be our duty to call the attention of the Board to the direction in which it leads as wholly different from that which we supposed the Board had attempted under its construction of the order constituting it to give to this inquiry.

Now, in regard to the dispatches of General Porter which the
1170 learned Recorder has referred to. We do not wish to anticipate the argument in reference to those dispatches. Those passages which he has read were certainly singularly prophetic and true as to the future, as the result proved, and as the result has been proved in the evidence before this Board; they were also singularly true in a most remarkable manner in reference to the past, and in reference to the previous orders and dispatches of the commander-in-chief to which they did expressly refer. But how can they be connected in any way with this correspondence which appears to have taken place between the Secretary of War and Major-General Halleck wholly unknown either to General Pope or General Porter?

I also wish to call the attention of the Board to what is obvious, that all these dispatches are the government's own evidence introduced by themselves, and it is rather late in the day, as it seems to us, for them to be offering any evidence to correct or qualify or explain. It is sufficient for our purpose in regard to all those dispatches, that their absolute and scrupulous truth has been proved both on the court-martial and on this inquiry. What this may lead to, if it is received, we cannot now undertake to say. It would hardly seem to be within the range of fairness, as recognized among soldiers, that General Franklin's reputation should now be attacked (for that is the character of General Halleck's reply) in his absence, and without any possible opportunity for him to be heard, or anybody on his behalf; and so in regard to all the other generals, their movements, and character, who are supposed to be involved in that correspondence between General Halleck and the Secretary of War. It will be sufficient, as it seems to me, and those associated with me, if we can attend to General Porter's case, and not be dragged out from that into an inquiry as to the character or conduct of any other generals, except so far as they are necessarily involved in the charges against him. I do not see that that inquiry started by Secretary Stanton on the 28th has any reference to it whatever.

The RECORDER. These dispatches and orders from the files of the War Department illustrate and explain many of those movements for the information of the Board. Whether they affect, directly or indirectly, the reputation of anybody else, I have nothing to do with. My attention was drawn to the necessity of bringing in everything to illustrate this case by the character of the "opening statement" of the petitioner, in which, starting from the James River at Harrison's Landing, to which the Army had fallen back after the victory at Malvern Hill, he follows his movements on up, and interpolates throughout his dispatches criticisms upon the movements of his chief, and then criticised the movements of the General-in-Chief in one of these, dispatch No. 8, for he says:

I know he is misinformed of the location of some of the corps mentioned in his dispatches.

I desire to have the whole history of this transaction, so far as the files of the War Department or the Adjutant-General's Office will furnish it, placed before this Board, and have a record for the historian of the future. They at the same time show that Major-General Franklin did have orders on the 26th, peremptory orders, to move up to General

Pope's assistance, and that Major-General McClellan had repeated and reiterated orders to the same effect; but that, nevertheless, Manassas Junction was left open, and all the trouble that afterwards arose came as the result of that unfortunate circumstance. They also show that the petitioner was criticising General Pope for his movements when General Pope was acting according to a regular and well-sustained plan.

1171 Mr. CHOATE. We certainly have nothing to do with the "historian of the future," unless the Recorder refers to Colonel Smith, who has placed himself in that attitude.

The PRESIDENT OF THE BOARD. It will be ascertained by referring to the record that early in these proceedings the decision of the Board was announced that we could go into the plans and conduct of that campaign only so far as might be necessary to determine the action of the petitioner in accordance with those plans, or under any orders that he might have received. We have endeavored as far as possible to limit the introduction of evidence in accordance with that principle. We feel bound, in this case, to exclude the evidence now offered. It was announced once, and it is now repeated, that we are bound to assume that what General Pope did in his official capacity was right, so far as this case is concerned. Whether those acts of his were of his own volition, or whether he was acting under a general plan dictated elsewhere, is immaterial to this issue. All that we can ascertain is what his orders were to the petitioner and those who co-operated with him, or what the acts of all were under those orders. If any evidence has been introduced beyond that point, it has been because it was so connected with pertinent evidence that it could not be separated from it. Any evidence clearly not bearing upon the points at issue we must necessarily exclude under our duty to all concerned as well as to the petitioner. It is expected, further, that in the consideration of the evidence already upon the record in the arguments of counsel on either side, that view of the case as presented and decided by the Board will be adhered to.

The RECORDER. The Board will recollect that the counsel for the petitioner, after introducing General Pope's statement to the committee on the conduct of the war, made especial reference to the closing words relative to General Pope's determination or desire to bring him to justice. In various ways General Pope has been held up before this Board as the persecutor or prosecutor of this petitioner. I now offer in evidence, duly authenticated by the seal of the War Department, President Lincoln's order, dated September 5, 1862, directing an inquiry as to Major-General Fitz-John Porter, whether he was with his command in the battle of Friday, August 29, 1862, General Pope commanding the United States forces, and, if not, where was he, and why was he not in such battle; and, second, in regard to Major-General Franklin; and, third, in regard to General Griffin. I propose to offer that as the act of the President on the 5th of September, 1862, ordering an inquiry.

Mr. CHOATE. And with nothing to follow?

The RECORDER. Yes; the proceedings of the court of inquiry on that subject.

The PRESIDENT OF THE BOARD. Inquiry into whose conduct?

The RECORDER. The petitioner's. I offer it merely to show from what quarter came that action, as far as the petitioner was concerned.

Mr. CHOATE. It appears that a court of inquiry was ordered on the 5th of September (and dissolved on the 15th) to answer several questions; one in regard to General Porter, one in regard to General Franklin, and one in regard to General Griffin. There was no action of the court, ex-

cept to meet, adjourn, and dissolve. It does not indicate the quarter from which the charges were made in respect to either of those three generals. I cannot see, from an examination of it, that it has any pertinency on the question of General Pope's command, or to any of the charges upon which General Porter was tried. The Board will see by the record that the investigation commenced in November. There was,
first, a military commission ordered. It appears by the record
1172 on page 2 that a military commission had been ordered, by special order of November 17, to meet for the trial of General Porter, and that that was dissolved by the order of November 25, which constituted the court-martial. Here is an offer to show that a court of inquiry (which is something wholly unknown to us or to General Porter until this moment) was instituted by an order of the President on the 5th of September; but, without any action on its part, was dissolved by an order from General Halleck on the 15th, at which time General Porter was on his way to Antietam, which battle took place two days afterwards. What that has to do with the origin and prosecution of the charges upon which General Porter was brought to trial at the end of November, it is impossible for us to see. If it should be received, we want to give notice to the Recorder that we shall ask, and we will desire to suggest to the Board that we shall be allowed, to put in evidence the appeals which General Porter made, even at that early date, to the government in regard to the charges and in regard to the questions that had been raised as to his conduct in the second battle of Manassas.

The RECORDER. The Board will perceive when it comes to look at these papers that this Board of Inquiry is ordered by the President of the United States, over his own hand, of his own volition, as the law gave him such power, and that it was for the purpose of examining into the very transactions that have formed the subject of investigation by this Board. That was the first proceeding instituted in the matter. That is why I offer it. It is duly authenticated under the seal of the War Department.

The PRESIDENT OF THE BOARD. It is not seen that this can have any bearing on the question. The law authorizes the President only to order a Court of Inquiry in such cases. Hence the fact that it was appointed by the President indicates nothing concerning the source of the charges. It opens a question which we cannot now see has any bearing upon the guilt or innocence of the petitioner.

The RECORDER. Then I understand it is ruled out?

The PRESIDENT OF THE BOARD. Yes; it is ruled out.

The RECORDER. From the files of the War Department I have one of the documents which the counsel called for of record some time ago. I do not recollect that it has been put in evidence. The Board will remember that during the examination of Major-General McDowell he was questioned as to such publications as he had made with reference to the petitioner and the campaign under investigation; and that which was entitled "Extracts from reports of operations in Northern Virginia, summer campaign, 1862; operation August 29, second Bull Run," was brought in. I wished at that time to ask him on the subject of the original or duplicate original of this very paper that I now present from the files of the War Department, which was signed by the Adjutant-General himself; but during the examination I misplaced the paper on my table, subsequently found it, and it has been again mislaid, so that with the most diligent search I have been unable to find it. This is a certificate of General Townsend of date January 7, 1870, with a report from B. Wells, chief clerk of the archive office, that he had compared

the printed extracts from the reports of Stuart, Longstreet, and Jackson with the original reports, and finds them correct, except some unimportant differences noted on the printed slips. The document is in, except the report of the clerk of the archive office at page 754 of the Board record.

The PRESIDENT OF THE BOARD. Does the letter calling for the comparison appear in evidence?

1173 The RECORDER. No, sir; I saw none, or I should have introduced it.

Mr. CHOATE. The only thing that we have to say about those is as to their utter irrelevancy. As the Board will see on examining it, there is no pretense or certification from the department, except that they are correct extracts. Nobody ever questioned that the extracts published were correct. The extracts were read from the book when General McDowell was under examination. There is no pretense of certifying to the 29th of August—no pretense in the least of certifying to that date; it is not a part of the extract, and does not purport to be; and General McDowell testifies that he prefixed it himself.

The RECORDER. The prefixes which the gentleman refers to explain the reports that he intended to use, of course, and those were sent to the War Department, as appears from the extracts introduced by the petitioner himself for verification.

Mr. CHOATE. There is not the least doubt that they were certified as correct extracts. But what I was calling the attention of the Board to is, that the heading is no part of the extract, does not purport to be, and was put on as something additional to the extracts and prefixed to them by the author.

The RECORDER. The whole heading, of course. There has to be a heading to everything that is printed in that way explanatory of what is to follow.

The next document which I desire to offer is a communication of Major-General Pope to President Grant, dated Washington, April 18, 1874, alluded to by Major-General McDowell in his testimony, asking the President to examine as fully into the question as he thought justice or mercy demanded in reference to this petitioner, and that he would order a board of competent officers of high rank unconnected with the Army or the transactions involved to investigate fully the statement of this new evidence made by the petitioner, and to report what bearing it would have upon the findings and sentence of his court-martial if it could be established, and in connection with that, for the information of the President, as we have already brought in, or attempted to bring in as far as we could, the views of President Lincoln on this subject. I have the original reply of President Grant, dated at the Executive Mansion, Washington, D. C., May 9, 1874, an acknowledgment of the letter of the 18th of April from General Pope, informing him that he had made himself familiar with the evidence on the trial; had read with care and attention the petitioner's appeal to him; had concluded that no new facts were developed that could be fairly considered, and that it was of doubtful legality whether by mere authority of the Executive a rehearing could be given. This gives us all the opinions that I can find of any ex-Presidents on this subject.

Mr. CHOATE. This appears to be a private correspondence between General Pope and General Grant in the year 1874. It certainly was not offered in contradiction of anything that we have to prove, or that General McDowell has stated. General McDowell testified that at one time he did concur, if I recollect his expression, in a letter that General Pope

wrote to the President, expressing his opinion as to the propriety of granting a rehearing, or re-examination of the case. If it is to corroborate that statement, it is wholly unnecessary, because that statement is entirely uncontradicted and no further proof on the subject is admissible. Now, why do we object to these? They do contain on one side expressions of opinion by General Pope, and on the other expressions of opinion by President Grant. Those gentlemen are both living, and one has refused to appear before the Board as a witness and subject
1174 himself to cross-examination. I submit that as long as he remains in that attitude, it is not competent for the Recorder to offer, as against General Porter, opinions of General Pope, which we may not have the opportunity of testing by the ordinary and usual right of cross-examination, which is accorded to any person charged with any offense, in respect to the opinions of any witness whatever that may be offered against him. Then, in regard to President Grant's opinion, so far as it may be shadowed in the letter written by him, the Board will notice that it is not an action upon any application of General Porter at all; it is purely in the nature of a private correspondence between those two gentlemen, while General Grant was in the office of President. Now, if his opinion is to be offered for the purpose of bringing its weight to bear in this investigation against General Porter, will there be any fairness in that, unless we can have an opportunity of cross-examining the person whose opinion is offered. President Grant may have expressed what opinions he does express in this letter without taking into view the evidence and the facts which are before this Board; if so, ought we not to know it? The Ex-President, it is well known, is in a foreign country and not likely to be present within any reasonable time, for the purpose of this investigation. My objections to the admission of this matter are fundamental; that his opinion is of no relevancy whatever, not the least; it is not his opinion that is the object of this inquiry. Then, apart from its entire immateriality, the extreme injustice of receiving anybody's opinion under circumstances when it cannot be put to the test, to which we are entitled to put it.

The RECORDER. The petitioner, through his counsel, introduced Ex-Governor Newell, of New Jersey, as a witness relative to conversations had with President Lincoln under circumstances when he could not be put to the test to which we were entitled to put him, to use the language of the counsel, on cross-examination; and the Board at that time accepted that evidence for the information of the President of the United States for what it was worth. The rule applies in this country as in Great Britain that the President is always in office. What President Lincoln might have done, President Grant or President Johnson could have done. If the petitioner had not thought so, he would not have made the appeal, extracts from which have been introduced in evidence. One of those appeals was to President Grant. The letter of General Pope comes under the ruling that the Board made on the last day of its session on the subject of communications of an official nature. It is signed by General Pope officially; it is addressed officially; and the reply is such an official reply as the President of the United States usually makes. The reply shows that the President of the United States had read the evidence in the case and the appeal.

Mr. CHOATE. No matter what it shows; the question is, as to its applicability.

The RECORDER. He had as much right to look into the matter after the decision of the court-martial as President Lincoln had after he had placed his signature to the record which made it complete and final.

As the Board admitted the evidence on that subject of Governor Newell without the usual test of cross-examination being possible, here is a letter from the President, which thoroughly explains itself and shows what action he took in the matter. Besides, in view of all that the gentlemen have said as to General Pope declining or refusing to come here, when we know that he has always been subject to being brought here upon a proper subpœna, it seems very appropriate that his request to the President of the United States, written apparently without the
1175 knowledge of the petitioner for a re-examination, should be received as a part of the history of this case, he being the commanding general of that army.

Mr. BULLITT. So far as the Recorder can rely upon the evidence offered by us as to what passed between Governor Newell and the late President Lincoln, allow me to call the attention of the Board to the ground upon which that testimony was offered. President Lincoln had approved the sentence of the court-martial, and his approval implied an examination of the testimony and such an analysis of that testimony as would lead him to the conclusion that the findings of the court-martial were correct. Now, the evidence of Governor Newell was for the purpose of showing that President Lincoln had not made the examination of the case for himself, but that he had taken the opinion or revise furnished him by Judge-Advocate-General Holt as the basis of his opinion. If I recollect the words of Governor Newell correctly, he stated that President Lincoln used the language that he had not the opportunity of making the examination of the testimony himself, and that he had taken the opinion of the Judge-Advocate-General as the basis for his opinion, and had acted upon that practically in ignorance himself as to the merits of the case. It was for the purpose of enabling you to understand precisely how that sentence came to be approved, and thus to determine what value and what weight was to be attached by you to the opinion of President Lincoln and his action in approving that sentence, that Governor Newell's testimony was offered. That would be no reason why this letter of Ex-President Grant should be offered in evidence. In the first place, he had no official connection with the approval of the sentence. In the next place, I do not understand that this is an official letter or any official action. Is it?

The RECORDER. Yes; it comes from the Executive Mansion.

Mr. BULLITT. I do not see that there is anything official about it.

The RECORDER. It was not his custom to affix the word "President" to his signature.

Mr. BULLITT. So far as the letter of General Pope is concerned, if we were offering that letter, it would be a different matter from it being offered by the other side. Exactly for what purpose it is offered I do not understand. Does it contradict anybody? If it contradicts anybody it contradicts General Pope. I do not see that it contradicts anything that the petitioner has ever said or done, and I do not exactly understand its pertinency. If the Recorder wants to prove that General Pope has always been anxious to give General Porter a fair hearing, if he wants to prove that General Pope has always been ready to do his duty towards giving General Porter a fair hearing, then I do not think it is relevant, because the proper mode of doing that would be to have General Pope come here when he had a chance to come, for the purpose of proving it himself. I do not see any single fact in this case to which that letter can possibly apply. It does not, certainly, prove that General Pope did not say in that report to the committee on the conduct of the war that he was General Porter's prosecutor, and that

the last duty he had to perform in relation to the Army of the Potomac was to see that General Porter was brought to justice. It does not contradict that; and I do not suppose the Recorder wishes to contradict General Pope. If he wants to go into that question, we may produce other letters, and I think we can produce, which will practically answer this one. I do not see that it is a matter of very much importance so far as we are concerned, or so far as anybody is concerned. This Board has all the evidence before it that the court-martial had; all the
1176 evidence that the President of the United States had; and the additional evidence that both sides have been able to give. I rather think that this Board is in a better condition to judge and determine in reference to this matter than anybody who has preceded it. I do not feel that there is any reason, as far as this case is concerned, why this should not come in, except, as I said before, when you depart from the proper subject of inquiry you are opening a field probably very much wider than you originally intended, and a good deal wider than may be convenient hereafter when the rebutting testimony comes in.

The RECORDER. The petitioner has stated over and over again that General Pope refused to come, that General Pope substantially was his prosecutor; and yet we find from the letter that I offer here that when General Pope became apprised of the fact that the petitioner was seeking Presidential interference, for the purpose of action upon his case and of obtaining the justice, so called, which he demanded, General Pope, then in Washington (for that was the time of the court of inquiry in Brigadier-General O. O. Howard's case), immediately addressed the President of the United States a communication urging the very investigation that is now being had. As far as the President of the United States is concerned, turning to my *vade mecum* which has been of such service to me, namely, the statement of the petitioner made at the opening of this case, I find that he says:

> Again, in 1869, I appealed to President Grant. Many private petitions were made by my friends; and in 1874 I again appealed to President Grant that I might have a rehearing, and resolutions recommending this act of justice were passed by the legislatures of New Hampshire, New Jersey, and Pennsylvania.

So we see, from his own statement made before this Board, and by which he is concluded, that he applied to President Grant in 1869, and again in 1874, for an investigation. We see from the communication of the President that he investigated the matter upon what the petitioner presented; that he was familiar with the evidence, and that he decided not to grant a rehearing. As he has made these statements of his appeals for justice to the President, it is pertinent that the action of the President for the time being, whoever he may have been, should be of record. President Grant could have pardoned him, just as President Hayes can, of the subsisting portion of the sentence.

The PRESIDENT OF THE BOARD. The objection is overruled, and the papers will be admitted.

The RECORDER. I have no more documentary evidence.

The letters admitted are as follows:

WASHINGTON, *April* 18, 1874.

Mr. PRESIDENT: It is no doubt known to you that General Fitz-John Porter claims to have procured evidence since his trial, not attainable at the time, which would either acquit him of the crime of which he stands convicted or greatly modify the findings and sentence of the court-martial before which he was tried, and that he has embodied in a printed pamphlet the kind and character of this evidence, and what he expects to establish by it, together with an appeal for a rehearing of his case.

It is widely asserted, by those who sympathize with him, and probably believed by many who have no personal interest in his case, that influences hostile to him have restrained you from examining this statement of his case, and have thus worked great

injustice by preventing the Executive from considering statements or evidence which might vindicate his character.

It is needless to say to you that I have never used any influence with you, personal or other, to prevent the investigation of his statements, nor even intimated to you in any manner that I objected to any action you might think proper to take in the matter.

Nevertheless, as I do not wish even to seem to consent to any additional misconceptions concerning me or my action in this case, I beg (if you have not already done so) that you will yourself, Mr. President, examine as fully into the question as you think justice or mercy demands; or that you will order a board of competent officers
1177 of high rank, unconnected with the armies or transactions involved, to investigate fully the statements of this new evidence made by General Porter, and report to you what, if any, bearing it would have upon the findings and sentence of his court-martial, even if it could be fully established.

I am, sir, very respectfully, your obedient servant,

JOHN POPE,
Brig. Gen., U. S. A.

General U. S. GRANT,
President of the United States.

EXECUTIVE MANSION,
Washington, D. C., May 9, 1874.

MY DEAR GENERAL: Your letter of the 18th April, in regard to your position in the matter of a rehearing of the Fitz-John Porter court-martial, was duly received.

You are under the apprehension that I had not fully examined the case, or rather, that the public so thought, and that you had used means to prevent me from giving the subject fair consideration. In reply, I will make two emphatic statements. First, to the best of my recollection I have never had but one letter from you on this subject prior to the one I am now answering, and that simply contained the request that if I contemplated reopening this case, that I examine both sides. I read, during the trial, the evidence and the final findings of the court, looking upon the whole trial as one of great importance, and particularly so to the Army and Navy. When General Porter's subsequent defense was published, I received a copy of it and read it with care and attention, determined if he had been wronged and I could right him I would do so.

My conclusion was that no new facts were developed that could be fairly considered, and that it was of doubtful legality whether by the mere authority of the Executive a rehearing could be given.

Yours, truly,

U. S. GRANT.

General JOHN POPE, *U. S. A.*

ARCHELAUS DYER, called by the Recorder, being duly sworn, testified as follows:

Direct examination:

Question. State your full name, occupation, and residence.—Answer. Archelaus Dyer; farmer; residing in Fayette County, Ohio, near Jeffersonville.

Q. During the entire month of August, 1862, were you in the military service of the United States? If so, in what capacity?—A. I was. I was in Company A, First Ohio Cavalry. I was acting as orderly while in the service. In fact, my whole time during service was in the capacity of orderly. I enlisted as a private soldier. I was under different generals.

Q. Where were you on duty near the latter part of August, 1862?—A. I was on duty with General Pope.

Q. At his headquarters?—A. Yes, sir.

Q. Do you know Capt. Douglass Pope?—A. I did at the time.

Q. Where were you on the afternoon of Friday, August 29, 1862, about the middle of the afternoon?—A. I was with Captain Pope.

Q. Where and at what time were you with Capt. Douglass Pope on that day?—A. I was ordered out with Captain Pope. I don't think it

was quite half past four, yet it was after four o'clock. I never carried a watch, and I didn't know the exact time.

Q. Where was it that you were ordered out—at what place?—A. Headquarters, Buck Hill.

1178 Q. Near to what prominent place or point?—A. The stone house.

Q. On the Warrenton turnpike, in Virginia?—A. Yes, sir.

Q. State exactly, or as near as you can recollect, what duty you went on with Captain Pope, where from, and to what place, and how you went; describe fully.—A. I went with him in taking a dispatch to General Porter. I went from General Pope's headquarters.

Q. Narrate what transpired at the time of your starting.—A. I was ordered out, and I came around—our camp was right in the rear of General Pope's headquarters; General Pope lay right against the woods, and we lay right in the fields—I came around on horseback. There were six of us orderlies came around and reported; Capt. Douglass Pope came by, and the assistant adjutant-general, Ruggles, came out. I didn't see him give any written orders at all. They might have been given before. But I heard him give the directions. I heard him tell Captain Pope to go to General Porter—give him directions to go to General Porter and tell him what directions to take.

Q. State what it was.—A. It was that we should go up a certain little branch, and he pointed in the direction that we were to go. That was up past a spring, Hazel Spring; and then we were to strike across the country in the direction of Bristoe Station. That was the orders as near as I can tell, word for word, as the adjutant-general gave it.

Q. Repeat his language as near as you can.—A. It was to go up this run past Hazel Spring. He pointed up a certain run. We could see it from headquarters—a little branch that came down—to go in the direction of Bristoe Station, until we struck the Manassas Railroad. There, he said, we would find General Porter's corps encamped between a certain church—Bethlehem Church, I think it was called—and a run. I don't recollect now what run; that it extended along the railroad, and then we would find General Porter's headquarters. That was the orders, as near as I can tell.

Q. What did you do then?—A. We started off with the captain, and went.

Q. Describe exactly the route you took, as near as you recollect it.—A. We went across and struck the left of the run that came into a larger run that runs in front of the stone house. We followed on the left bank of that run until we got up to the first break of the hill. Then we crossed the run and went on up until we came to the spring, and then we changed our course, and turned to the left.

Q. What direction did you take then?—A. We took across the field by Mr. Wheeler's house; in fact I noticed the farm. It was not all the fences gone as farms usually were. There were some little fences on it, I took particular notice. Then we passed down and came onto a road, I cannot call the name, in front of Wheeler's house. Then we turned to the left again, and we came out on the Manassas and Sudley Springs road at New Market. Then we followed that road down until we came to another road. I cannot call the name of that one. We turned to the right, and after going down that road, about, I suppose, a half mile, we struck the bed of a stream that was rather level, rocky, solid—went up that stream for some distance, and then we emerged from it up

1179 on to the bank, and went in the direction of Bethlehem Church,

and we came near the railroad, and there we found General Porter's headquarters.

Q. Relative to the Manassas Gap Railroad and the Sudley Springs road, where did you find his headquarters?—A. We found them on the right-hand side of the road just before we struck the railroad—on the right-hand side of the road.

Q. Of the Sudley road?—A. I don't know the name of that road—this road that we went up after we left—we struck a road there. It was near Bethlehem Church, at any rate, but we didn't cross the railroad. It was right against the bank of the railroad.

Q. When this order was received by Capt. Douglass Pope, how near were you to the assistant adjutant general?—A. Well, I should judge I was about 15 feet.

Q. As near as you can recollect about what time did you start with that order with Captain Pope?—A. Well, it was not far from half past four o'clock. It was not half past four yet, I don't think, when we started.

Q. Where did you find General Porter's troops?—A. We found some of General Porter's troops just after we marched from the bed of this run; just a short distance after we came by on the bluff on the left-hand side of the road. There were some troops there, the first troops we saw.

Q. When you got up to where General Porter's headquarters were, what was then done?—A. We didn't tarry but a very little while, and we returned. In fact, I didn't dismount at all; didn't get off my horse; none of the orderlies did until we got ready to return, and then three were left. Three of Company C boys were left. I don't recollect their names. They were left with General Porter, and we started on our return, taking the same road that we had come.

Q. Did you follow the same road all the way back, or did you diverge from it at any point?—A. We followed the road back. We came to New Market, and there there was an orderly overtook us while getting a drink, and requested us to return. We did return. Then, on our return again, we came on the same route until we got a little below New Market, and then we took across to the right of Mr. Wheeler's house, in place of going on the opposite side of the way. We came direct by the spring. That is the only variation we made from the way we went.

Q. Did you see General Porter that day when you went down?—A. I did see General Porter.

Q. Did you hear any conversation between him and Captain Pope? If so, what was it?—A. I didn't hear no conversation. I just saw General Porter as we started to return. He stepped out with Captain Pope. Then the captain got on his horse, and we started on our return, but I heard no conversation.

Q. What were you doing while they were together there?—A. I was talking with some of General Porter's men. They came around us, several of them, and asked us how the fight was going on, and we were talking there.

Q. As you went back, at what rate of speed did you go up toward that spring where you got a drink?—A. Well, we went pretty much the same gait all the way through—rode about the same all the way through. Part of the time in a canter—a pretty swift canter
1180 where the road was level, and part of the time in a trot; sometimes we changed down to a walk.

Q. Which direction is that which you are speaking of now?—A. Either way. We went about the same gait both going and coming.

Q. About what time did you get back to General Pope's headquarters?—A. I don't know the time of evening. It was, however, just after dark.

Q. How far could you distinguish objects at the time that you got back?—A. I judge near a quarter of a mile.

Q. What recollection have you of it?—A. Well, I have a recollection of this, that when we came across this little branch, there was a bank on our right, and I could see General Pope's tent on the side of the hill. I think there were three tents.

Q. How near were you to the stone house when you saw these tents, going back?—A. We were probably 300 or 400 yards from the stone house. I don't know, however, the exact distance.

Q. On which side, north or south of the Warrenton turnpike, of the Centreville turnpike when you saw the tents of Buck Hill?—A. On the south side.

Q. How far at the time did you estimate the distance that you had to travel?—A. At that time I supposed it to be five miles. We made pretty good time, according to the distance.

Q. According to the best of your recollection, how long were you in going, after that message was delivered by Colonel Ruggles, down to where you met General Porter?—A. I would think we were not, at the gait that we rode, to exceed three-quarters of an hour.

Q. What part of the road was it over which you traveled pretty fast?—A. We traveled, when we crossed Mr. Wheeler's farm, pretty fast. And another point that I noticed where we rode fast was in going up the bed of this creek. There was a road that went along, but we took up the bed of the creek; that was smooth, and we rode very fast up there.

Q. Do you recollect what part of the road it was upon which you walked your horses?—A. Well, I recollect one place we walked our horses after we left New Market. We were then on the Manassas and Sudley Spring road, and the reason why I recollect walking the horses there it was bluffy on the other side, a little kind of a bluff, and I noticed the woods, and I thought it looked like a very nice place for rebels to jump down onto us there; and I know we went slow there. I recollect distinctly riding slow down a little kind of rocky place, and afterwards up the bank.

Q. In going on down from Buck Hill across the Centreville pike, and so on down in the direction you have given, do you recollect whether you met anybody or not?—A. Yes. Before we got to Hazel Spring we met General McCowell. I judge it was near a quarter of a mile from the spring. He came down from the left as we went up the run, and right opposite where we met him, off on the right, was an old house
1181 that stood in the field. But I didn't hear no conversation. We didn't halt but a moment or two, and went on. Him and Captain Pope exchanged a few words, and we went on. The reason that I took notice, and thought more of him and Captain Pope meeting, was that after we got to the run we immediately turned to the left in place of going in the direction that I had thought Colonel Ruggles had ordered us to go—that we should have gone right straight on; but wet urned to the left, and then I thought that General McDowell had turned him off the directions that Colonel Ruggles had given us.

Q. Previous to the time that you met General Porter there on that day, had you ever seen him?—A. I saw him once. This was only the second time that I ever saw him.

Q. Where did you see him—under what circumstances?—A. Well, I had gone to him with Lieutenant-Colonel Smith.

Q. T. C. H. Smith?—A. Yes; of our regiment. He was our colonel. I had gone with him; I cannot now state whether it was the day before, or two days. I cannot locate, and never could exactly, the road of going that day.

Q. What was the reason of that?—A. I don't know. I never could exactly. We were in a strange place. It was rather a strange road, and I never took no particular notice of the road that we went that day.

Q. Do you recollect any circumstance after having left General Porter that first time?—A. With Colonel Smith?

Q. Yes.—A. Yes.

Mr. BULLITT. Is that a conversation, or what is it? If it is a conversation, I object to it.

The RECORDER. I should like to know what you mean by "conversation."

Mr. BULLITT. You have asked him if something occurred—if he broke his neck; that would be an important event perhaps; but if it was a conversation, we want to know what you want to prove.

The RECORDER. No conversation with Colonel Smith?

A. Yes. What makes me recollect of going with Colonel Smith was, when thinking of the mode in which Colonel Smith traveled on that route, there were five of us with him.

Q. My question is, when you left General Porter on the first occasion, is there any circumstance that you recollect connected with that visit or meeting with General Porter?—A. Yes, sir.

Q. Concerning General Porter?—A. Yes, sir.

Q. What was it?—A. I got about a mile on our return, when there was an orderly came from General Porter, who said that General Porter wished Colonel Smith to return and dine with him. I think it was to dinner.

Q. Have you been over the ground since 1862?—A. Yes; not until recently.

Q. Do you know of any battle on the 29th of August, 1862?—A. There was fighting there—Bull Run.

1182 Quite sure about it?—A. I am pretty sure there was fighting for about three days right there—fighting a little, I think.

Q. How long since you went over that road?—A. It was, I think, about the 5th of last month that I was over that road.

Q. How did you go over it?—A. I went from Manassas up in a buggy, then took it afoot from there out to New Market, and then took my buggy from there—the road.

Q. On this lithograph map, prepared by Maj. G. K. Warren, please indicate first the location of Maj. Gen. John Pope's headquarters on the afternoon of August 29, 1862.—A. That map is not altogether like it was then, I don't think. General Pope's headquarters were right there somewhere. [Point indicated by the witness is marked "P" in red ink.] We laid right back of it. [Witness indicated a northeasterly direction.]

Q. Indicate the direction you took when you went with Captain Douglass Pope to deliver that order that afternoon to General Porter.—A. We came out on to this road at headquarters, and took down the road a piece to about *there*, I judge, same place; and then we took across in this direction about *there*, I judge, and we crossed that *there;* then we followed that run on this bank pretty close to the run all the way up. There was a road we came up on the right there, but then we fol-

lowed the run. Then we passed around this spring and turned right around the spring until we got just above the spring. Then we crossed right directly towards Wheeler's and went right around Wheeler's horse-lot, around his stable, and came into that road in front of Wheeler's house and down here and struck *this* road. Then we followed this road right out to New Market on this road here. Then we followed this road, the Manassas road, right down directly in the road, and then we turned out this road here [the witness indicated on the map the course taken.]

Q. Do you consider *this* the Manassas and Sudley road *here?*—A. Yes. *Here* is where we struck the bed of that run in place of following the road, and then we came out right about *there.* And then here—*this* is the railroad, is it not? Then here we found General Porter's headquarters right in *here.* [Point designated by the figure 5.]

Q. Indicate the road that you went to get in there.—A. Right *here* we came up this road—right on the road, and went right into his headquarters right *there.*

Q. Now on returning indicate on the map the route you took.—A. We followed the same road on our return.

Q. Show the place where the well is.—A. It was here at Mr. Smith's. The road ran between the well and the house at that time, and we drew water there; along *here* some place Captain Pope remarked about wanting some water. [The witness indicates a point not far from Greenleaf Branch.] I noticed up here at New Market a little square building with a square roof to it, and I thought at that time it was a spring house. I told him we could get water there, and we went on ahead, but the well was on the opposite side of the road; this square building was not the well. The water was drawn with a chain and wheel, when one bucket went down the other was coming up; and I recollect drawing the water very distinctly. There is where we got the water—New Market. There is where we were ordered back. We returned, and then on our return we went about *here,* I think, some place, and then about *here* on the road I think we went in, took off at this road and went directly towards the spring; struck the same road right there at the spring, and
1183 traveled on back to General Pope's headquarters. Just after we crossed here [the ford of Chinn's Branch] I noticed Pope's tent on our return [marked thus +].

Q. Indicate whereabouts you met General McDowell on that afternoon.—A. I don't know that I can on the map exactly. But there should be an old ruins up here some place in the field; I judge about there some place. [Marked "R" for "ruins."] He came down from this side right opposite that house; I know it was right opposite that house that we met.

Q. At which edge of the woods; the lower edge or the upper edge?—A. It was not entirely out of it. I don't think this map is hardly correct.

Q. Now I want you to indicate your route back by arrow-heads. [Route indicated.]—A. It was there we met General McDowell. [Point designated marked "McD."]

Cross-examined by Mr. BULLITT:

Q. In what direction did General Ruggles point with his hand at the time he gave you instructions to find General Porter?—A. He pointed off south.

(The large tracing is explained to the witness.)

Q. Take Buck Hill as the position that you say you started from and

indicate the direction on the map that General Ruggles pointed.—A. He rather pointed in this direction.

Q. Look at Mount Pone, and say whether that is in the line of his pointing, or the Five Forks, or B. F. Lewis's. Which one of those would be about where the line would come in reference to this point?—A. I do not know anything about Mount Pone; but I would judge it was a little to the right of Mount Pone.

(Witness indicates a little to the west.)

Q. That house of which you have spoken, let me understand where it was located. I understood you to say it was near New Market?—A. Which house?

Q. That square house that you spoke of.—A. Yes; a little square building which was right at New Market.

Q. Was it east or west of the Manassas and Sudley road?—A. It was on the west side.

Q. Was it on the north side of *this* road, which is the Warrenton, Alexandria, and Washington road, or south?—A. It was on the south.

Q. It was south of that road and west of the Sudley road?—A. Yes; the well was north of that road.

Q. And the house was south?—A. Yes.

Q. What sort of a looking house was it?—A. It was a frame house, I took it.

Q. What size?—A. Probably 8 or 10 feet square; probably 10 feet square.

Q. One story or two?—A. I was not in it; only one story.

1184 Q. What sort of a roof had it?—A. A square roof.

Q. Do you mean a French roof or do you mean a flat roof?—A. It runs up to a point *this* way. [Witness illustrates.] It has four squares to it.

Q. Do you know what a French roof is?—A. No, sir.

Q. Do you know what a Mansard roof is?—A. No, sir.

Q. How far was it from the eaves of the house to where the roof ceased? I understand you to say it had a square top to it.—A. Yes; it had a square top, *that* way. [Witness illustrates.]

Q. That is not square; that is a cone.—A. It was not oval, nor it was not square.

Q. Had it a ridge-pole?—A. It ran up with rafters, as near as I can say; the same as our old buildings run up, only there was four sides to it. [Witness illustrates.]

Q. Was it flat on the top?—A. No, sir.

Q. But it had four roofs to it?—A. It had four corners, the same as a house.

Q. How far did that house stand from the Sudley road?—A. I judge in the neighborhood of fifty yards.

Q. How far did it stand from the other road?—A. It stood somewhere between ten and twenty feet.

Q. Is that house there now?—A. Yes, sir.

Q. When did you see it?—A. I saw it, I think it was the 5th of last month.

Q. You are sure you saw it?—A. I saw it; yes.

Q. At the time you saw that house in 1862 was it a new or an old house?—A. It was weather-beaten; it did not show indications of being a tolerably new building.

Q. It showed indications of being a tolerably old building?—A. No, sir.

Q. Was it painted or whitewashed?—A. I don't think it was painted or whitewashed either.

Q. When you saw it the other day was it painted or whitewashed?—A. No, sir,

Q. Had it any windows in it?—A. Not that I saw, not that I noticed.

Q. What called your attention to that house particularly in 1862, at the time you speak of?—A. I thought there was a spring house, that we could get water there at that house.

Q. Did you go there to try it?—A. Yes; we went up there and found the well on the opposite side of the road.

Q. Did you go to that house?—A. Yes; I got a drink there.

Q. At that house?—A. At that house.

1185 Q. Inside of it?—A. No, sir; the opposite side of the road.

Q. How far from the house?—A. From this little house?

Q. Yes.—A. I suppose twenty-five or thirty steps.

Q. From the little house?—A. From the little house; maybe more, maybe forty.

Q. What other house was standing there at that time?—A. A dwelling-house.

Q. The dwelling-house and small house that you have spoken of?—A Yes, sir.

Q. The same one you saw the other day?—A. Yes, sir.

Q. Any other house there now except that dwelling and that house?—A. No, sir; not that I know of.

Q. Tell me what it was that made such an impression about that house; was it its shape, or the way it was built?—A. The way the roof was built was what drew my attention; and then wanting water was another thing that drew my attention to it the first time we traveled over it. And then that was the first point the last time I was out there that I noticed how the road had gone.

Q. That was the first and last time you noticed the road you went?—A. That was the first point on the road, going out to view the ground lately, that I noticed; that was the thing that drew my attention the last time, that made me positive about the place where I got the water.

Q. Then the first thing that made you positive as to the route you had taken was seeing that house on the 5th of last month?—A. Yes, sir.

Q. Did you see anything else on the route that attracted your attention particularly, except that house?—A. Well, there was a bluff which I spoke of in my evidence.

Q. Let us see on the map where that place was.—A. I don't know that that map is correct in regard to the timber.

Q. Do you think your recollection is more correct than the map?—A. *Here*, I would say, was about where the bluff lay. [Witness indicates on the map.]

Q. Just where Greenleaf Branch crosses the Sudley road, is it?—A. Yes, sir.

Q. What is the distance that that bluff extends along the road?—A. I do not know.

Q. Well, about?—A. It is heavier on the east side than on the west.

Q. I mean to say, in length how far does that bluff extend?—A. It extended to across the road.

Q. It did not run along that road?—A. No.

Q. Then you had to ascend that bluff, had you?—A. Yes.

1186 Q. How long was the ascent?—A. I should think fifty yards.

Q. What other point did you notice on the road besides that?—A I observed Mr. Wheeler's farm and residence on the road, and also observed this spring.

Q. In traveling over the road on the 5th of last month, did you observe those before you had seen this small house of which you spoke?—A. No, sir. I came to this bluff and that house, and that was where I first noticed my route.

Q. I understood you to say that the house was the first thing that attracted your attention.—A. It was the first thing.

Q. Did you see the house before you got to the bluff?—A. No, sir; I did not notice. I did not pay any attention to the bluff until after I got to the house.

Q. Then your attention was directed to the bluff after you had seen the house?—A. Yes; and I got up in my buggy and stopped and looked back. I asked the driver where this cross-road should be—there was no cross-road there; I says, "that is familiar; I think this is New Market"; and the darkey-driver told me it was New Market. I looked back and told him at the time I saw the bluff.

Q. In going to New Market the last time you were there, what road did you take?—A. Along the Sudley road until I got to the stone house; then I dismissed my driver, and told him to meet me at New Market, and I took it afoot. I went on to Buck Hill, and took it afoot over a direct route as near as I could the way I had gone.

Q. What was it that recalled your memory to the route you had taken along here?—A. It was this branch. [Witness indicates Chinn's Branch.]

Q. Anything else?—A. Nothing else in particular. That ruin of that old house opposite where McDowell met me; that house is not standing, it is torn away.

Q. Who was with you when you went over this road last month?—A. Mr. Duffee.

Q. Anybody else?—A. Nobody else.

Q. How far did you pass from the Chinn house when you came along?—A. We passed right *here*, about a quarter of a mile from the Chinn house; that was another point that I noticed particularly on both times.

Q. How far did you pass from the Wheeler house?—A. Directly around it.

Q. Where was the point at which you say you suppose you changed your route, or at least Captain Pope changed?—A. It was here at this spring, opposite the Chinn house; it was the Chinn spring. It is marked a spring opposite the Chinn house, on the Chinn Branch.

Q. When you made your estimate of the distance, what route did you estimate for? You said it was about five miles.—A. Yes.

I187 Q. Do you mean to say that, traveling the route which you have drawn?—A. Yes; which I have drawn on the map.

Q. You estimate that to have been about five miles?—A. Five miles, I guess.

Q. What part of that road; begin at the beginning; give the portions of the road you walked over, and the portions you trotted over, and the portions you galloped over?—A. I do not know that I could give it definitely, because we started in spurts and gallops, and then trotted a piece. I do not recollect stopping down to a walk any place so much as I do here at this bluff.

Q. I only want your best recollection; I know the difficulty of recollecting events of fifteen years ago, but still give your best recol-

lection.—A. I do recollect after we left the spring riding very fast across by Wheeler's house.

Q. Where did you begin to ride so very fast?—A. After we left the spring.

Q. How long had you stopped at the spring?—A. We did not stop at the spring at all.

Q. How rapidly did you ride from the point where you say you commenced riding rapidly, Hazel Spring, until you got opposite Wheeler's house; what rate per hour?—A. I could not give that.

Q. Was it eight miles an hour, or ten miles an hour, or twelve?—A. I could not give any estimate.

Q. You are in the habit of horseback riding?—A. I am not in the habit of timing. I never run horses; I never time horses.

Q. Do you live in the country?—A. Yes, sir.

Q. Do you ride horseback frequently?—A. Yes, sir.

Q. Do you drive frequently?—A. Yes, sir.

Q. Can you tell the ordinary rate at which a horse will go, whether you are riding rapidly, or walking, or trotting?—A. I could not give any estimate in regard to it.

Q. Have you all your life been used to horses?—A. Yes, sir.

Q. Riding and driving them?—A. Yes, sir.

Q. And cannot give us any estimate of the rapidity or slowness with which horses will move at a certain gait?—A. I cannot.

Q. You cannot tell how rapidly a horse will walk?—A. I never timed a horse. I can give by hearsay, but I could not from my own knowledge.

Q. I want your best judgment on the subject of how rapidly you traveled that day, according to your present recollection of the way you went.—A. We traveled in a very fast canter across *here*, and then the next place we traveled fast was up the bed of this run.

1188 Q. Where is that—from what point?—A. *Here* (from a line under the letter "a" in road), going off to this point *here* (a bend in the road southeast of "t" in "Merchant").

Q. At those two points you rode rapidly?—A. Yes, sir.

Q. How rapidly did you ride there?—A. In a fast gallop—fast canter.

Q. Did you run?—A. No; we did not run.

Q. Were your horses fresh?—A. Well, yes, about as fresh as any horses were in the service.

Q. Were not the horses in the service at that time all pretty well worn?—A. They were; ours were an exception.

Q. Your horses were better, were they?—A. Yes, sir. We furnished our own horses, and we generally kept pretty well mounted.

Q. I understand at these two points you went very rapidly; can you tell any other point where you went rapidly?—A. I cannot; at other places we went by spurts.

Q. How were those spurts?—A. I do not recollect checking down so much to a walk as I do at that place.

Q. You have stated that it took you, according to your recollection, three-quarters of an hour to go over that road. I have tried to get you to state how rapidly horses walked or cantered, or trotted or galloped; will you tell me how you arrive at it that it took you three-quarters of an hour, if you cannot form any opinion of how rapidly horses move?—A. I said about; not to exceed that.

Q. I want to know how it is that you can say that it took you three-quarters of an hour when you have already said that you do not know how rapidly horses move.—A. I say judging; when I am out doing my

work on the farm I tell by the sun what time of day it is. I know how long I have been doing a certain piece of work; I judge by the sun.

Q. Are you not able in the same way to judge how rapidly a horse can move?—A. I cannot; I look at the sun and judge about what time of day it is.

Q. If you had ridden a distance of five miles, and you looked at the sun when you began and looked at the sun when you quit going, could you form an opinion of how long it took you to go?—A. I can say that I have been about so long going over the road.

Q. But you could not say how rapidly a horse moves?

The RECORDER. The counsel has asked that question two or three times, and I object to it being asked again.

The PRESIDENT OF THE BOARD. The counsel will proceed.

Q. Can you state how rapidly your horse moved at any one time during that day—the fastest gait you went—was it five, or seven, or ten miles an hour?—A. I could not say; in fact, I never timed a horse.

Q. You saw General McDowell?—A. Yes, sir.

Q. Did you see any troops with him?—A. No, sir.

1189 Q. Did you see anybody else except General McDowell at that time?—A. No, sir.

Q. He was alone, was he?—A. He was alone.

Q. What troops did you meet on the road when you were traveling?—A. Met no troops.

Q. On any part of your road?—A. Coming out to General Porter's troops, those were the first troops we saw on the road.

Q. Either going or coming?—A. Going or coming.

Q. Where did you say that you saw them—at the run?—A. Just after we marched from the run; it was before we struck the railroad.

Q. You said that you came out on the run at that point, below Merchant's?—A. The first troops were at about the point "n" in "Manassas," within a short distance of the Manassas Gap Railroad.

Q. Was that a dry run, or had it any water in it?—A. It was dry at that time.

Q. Did you go back as fast as you went?—A. I judge about the same gait.

Q. Trotting, walking, and galloping at intervals?—A. Yes, sir.

Q. Did it take you about the same length of time to go that it did to come?—A. Pretty much the same; I would estimate the time nearly the same.

Q. Do you recollect in returning having gone to General McDowell's headquarters just before you went to General Pope's headquarters?—A. No, sir.

Q. Do you not recollect that Captain Pope went there to inquire which way it was to General Pope's headquarters?—A. No, sir; he did not to my recollection.

Q. Sir?—A. No, sir.

Q. Have you no recollection that just before you reached General Pope on your return that Captain Pope said that he could not find General Pope's headquarters, and went to some place to inquire?—A. No, sir; I have no recollection.

Q. Were there any camp-fires in the neighborhood of the intersection of the Sudley road with the Warrenton pike, that you recollect? Do you recollect of there being a great many fires there and your command getting confused because you could not find General Pope's headquarters—the point near the stone house; and that Captain Pope said he

could not find General Pope's headquarters?—A. No, sir; we found them.

Q. Did not go to General McDowell's to inquire?—A. No, sir.

Q. Was General Pope with General Ruggles at the time that order was given to Captain Pope to take to General Porter?—A. No, sir.

1190 Q. Did you see General Pope then?—A. No, sir.

Q. Where is the direction of Bristoe from that point that you say he pointed in the direction of Bristoe; was it the direction that you intended to indicate on the map?—A. Yes, sir.

Q. As being the direction of Bristoe?—A. Yes, sir.

Q. Had you been to Bristoe?—A. I had on former occasions.

Q. Did the general say it was in the direction of Bristoe?—A. Yes, sir.

Q. Did he name any other place beside Bristoe?—A. No; only this church and a certain run. General Porter's command should extend along this railroad from this church up to that run, and by striking that railroad off in the direction of Bristoe he would strike General Porter's corps, and then he could find where General Porter's headquarters were.

Q. Do you recollect the name of the run; was it Dawkins' Run?—A. I do not recollect. I could not call to mind the run.

Q. Did you get to Bethlehem Church when you went to General Porter?—A. No, sir.

Q. Do you know what Bethlehem Church is?—A. I never was right at Bethlehem Church.

Q. Do you know whether there was any building there or not?—A. I saw a church; I saw it at a distance. I saw it at the time we went with the dispatch.

Q. You mean at the time you went with Captain Pope to General Porter?—A. Yes; I saw it, for I was looking across the railroad at General Porter's troops; also, on the other side of the railroad down by the church; and that is as close as I have been to the church.

Q. What distance was that?—A. I do not know.

Q. Can you give us an idea; was it one hundred yards?—A. No; it might have been a quarter of a mile, may be farther.

Q. Had the church a spire?—A. It did.

Q. How tall a spire?—A. I could not say.

Q. You have seen spires?—A. I did not pay enough attention to it.

Q. You have seen spires frequently in the city; will you tell me whether it was a very tall spire or a low one?—A. It was not very tall.

Q. Had it a cross on it?—A. I could not say.

Q. There was a tower to it, was there not?—A. I do not recollect. I recollect seeing the church.

Q. Was it a red-brick building or a white frame building?—A. I could not say.

Q. Did you see any windows in the church?—A. I do not recollect that I did. I just looked down to the church and saw a steeple, and they told me that was a church.

1191 Q. You thought that was about a quarter of a mile off?—A. I thought it was; that was as close as I ever was to the church.

Q. Which side of the railroad was that church?—A. On the opposite side from General Porter's headquarters.

Q. You did not cross the railroad?—A. Did not cross the railroad at all.

Q. Did you see the dirt road which ran along that railroad?—A. If I did I did not notice it.

You do not know whether there was one that ran alongside? Which

way were General Porter's troops; were they on the right hand or left hand as you went up to General Porter?—A. On the left; he was back there, extending up to the railroad towards this branch in the direction of Manassas Gap.

Q. Had General Porter a tent?—A. Yes, sir.

Q. Was he in his tent when you went there?—A. I could not say positive, because I was talking with General Porter's men that came up around; and the captain got off, and went up around the tent. We came up to the side of the tent; the tent fronted towards the railroad; just before we got to the railroad we turned off.

Q. When General Porter came out with Captain Pope, as you say he did, how far did he come?—A. Just out to the corner of the tent.

Q. How long did he stand there talking to Captain Pope?—A. Not any length of time.

Q. Five minutes?—A. No.

Q. Two minutes?—A. They did all their talking in the tent.

Q. Then you saw them in the tent?—A. I did not see them in the tent.

Q. You saw Captain Pope go into the tent?—A. I saw him go around the corner of the tent, and that is the last I saw of him, until he and General Porter came out, and we took our leave.

Q. I understood you to say that after leaving General Porter's headquarters the second time you went directly to General Pope without stopping on the road anywhere. Am I right about that?—A. Yes; that is, we went the same road that we came.

Q. I understood you to say that you diverged, but you did not make a halt anywhere?—A. Did not make a halt anywhere.

Q. You went back to General Pope's headquarters with Captain Pope all the way?—A. Yes, I did; and three men of Company C were left.

Q. How many men were with you when you arrived at General Pope's headquarters?—A. There were three of us.

By the RECORDER:

Q. You said you furnished your own horses?—A. Yes, sir.

Q. Did you own them?—A. We took them from home with us and the government paid us for the use of them.

1192 Q. You continued to own them?—A. Yes; continued to own our horses. In that way we had a pretty good set of horses.

Q. This road that you went down from Chinn's Branch in the afternoon—in going over it the other day what indications, if any, were there of a road there?—A. There were places where wagons had been—the wheels had dug out little places; and then the grass grew up differently from other places. You can trail the road.

Q. What difficulty, if any, had you in discovering the road?—A. I had no difficulty whatever.

Q. The road itself I mean.—A. The road itself—only at Mr. Wheeler's farm. I had a little difficulty when I came to his farm.

Q. What was the difficulty at Wheeler's farm?—A. His fields had been broken up some, and had killed out the trail. When we came to his fence, then his house and his stable more particularly attracted my attention.

Q. Was there anything about that place that you recognized?—A. Yes—outbuildings and stables. The house I did not recognize so much. I recognized all the other buildings, and I inquired of Mr. Wheeler about the house, and he told me he had built a new house on the old foundation.

Q. You have said that you were accompanied by Mr. Duffee?—A. Yes, sir.

Q. Did you walk together down that road?—A. Yes, we were together a good portion of the time—most of the time.

Q. Alongside of each other?—A. No, I was rather in advance a good portion of the time. Mr. Duffee, when we started, wanted to claim that we went on that other side. He tried to draw me on the other side.

Q. Other side of what?—A. Of that little branch—Hazel Spring Branch. But I took my own course about it. When we got, also, by Mr. Wheeler's he wanted to influence me on the other side of Wheeler's house, but I took my own course about it.

Q. Did he give any explanation about that at the time?—A. No, not to me. I did not know what he had testified to.

Q. Who indicated the direction that you had taken that day when you and he were down there?—A. I did.

Q. Did he tell you what he had testified to here?—A. No, sir; he said nothing about it. No conversation in regard to what he had testified to.

Q. I am to understand that you made up this route independently of him?—A. Independently.

Q. In which direction at the Chinn Branch did he say he wanted you to go, up near the pike?—A. He wanted me to take right square to the left—leave Wheeler's house to the right; pretty much the same route that we marked on the map that I said I went back on.

Q. Up near the road when you first struck the forks of Chinn's Branch, what direction was it there that he wanted you to take?—A. He
1193 wanted to leave the branch entirely to the left-hand side.

Q. And go in which direction?—A. Right up the branch.

Q. Have the branch on the other side?—A. On the left hand all the way up, instead of part of the way on the right.

Q. You said there was a third orderly who accompanied you that day?—A. Yes, sir.

Q. Who was he?—A. I think it was Mr. Judah.

Q. Where is he?—A. He is dead.

The examination of this witness was here closed.

CHARLES DUFFEE, recalled by the Recorder, was examined and testified as follows:

Direct examination:

Question. I believe you said that you desired to make some corrections in your testimony?—Answer. Yes, I would like to do it.

Q. State what it is to the court.—A. In regard to the place where I turned off to the creek. When I was first on the Bull Run battle-field I did not travel that part of the road going up that run. When I went up with Dyer I discovered that I turned off too quick; I turned off above the spring, and I marked the map below. Then I placed the well wrong.

Q. How, as to the well?—A. I should have placed it at New Market, at Smith's house. After I got there this last time I found the road had been changed. The well looked very natural to me; the first time I was there it did not, and the second time it did. The road used to run between the house and the well; now it leaves the well as you turn on the left; at that time the well was on the right and the house on the left. I am satisfied I was mistaken about that.

Q. The road as delineated on the map is not exactly as it was at that time?—A. No, sir.

Q. Right there by New Market?—A. I can see the old road-bed where it went up. I learned from a man who lives there; I told him there was no pump there at that time; he says, "No, it was a windlass."

Q. In going down this road along Chinn's Branch with Mr. Dyer did either of you lead?—A. Mr. Dyer led most of the time; I could not recollect, and do not to-day recollect Mr. Dyer being with me only from his knowledge of the road. When we first started from Buck Hill I tried to lead him off the road to test him whether he was along or not.

Mr. BULLITT. Never mind.

Cross-examination by Mr. BULLITT:

Q. What was it about that spring?—A. At the time I went with Captain Pope I rode between the house and the well. We went up here where the spring is. Now on the road at that time we struck a
1194 road right *here*. (Witness indicates on the map.) And the road at that time ran betwixt the house and the well. The road has changed; it comes out below the well, instead of above the well.

Q. Where is the well now?—A. Right in *here* (witness indicates); before that the road ran between the two. (Witness indicates by marking the map.) I can see here a kind of bluff bank that starts up there.

Q. Where is that house with a four-cornered roof that Mr. Dyer spoke about?—A. (Witness indicates.) I don't know the distance, probably 150 or 200 feet from the main house.

Q. Did you notice that house in 1862?—A. No, sir, I do not recollect that.

Q. Do you think that that road, then, ran between the house and the spring?—A. Yes; after I got here, when I got talking about this road, he says, "That road ran between the house and the well; if you go back to the foot of the hill you can see where it turns off." I went back there, and I could see the old road-bed, and then it came fresh into my mind that I was mistaken in regard to locating the well before.

Q. Where is the point that you say you made a mistake?—A. I turned off below the spring on the map; I should have gone above the spring, because I could tell by a little hollow.

The examination of this witness was here closed.

The RECORDER. That is all.

Mr. BULLITT. Have you closed your case?

The RECORDER. I am done.

WILLIAM L. B. WHEELER, recalled on behalf of the petitioner, was examined, and testified as follows:

Direct examination by Mr. MALTBY:

Question. Are you familiar with the premises known as the Smith house on the map at Haymarket?—Answer. New Market.

Q. Have you heard the testimony of the witness Dyer as to the house—a little square house with a four-sided roof?—A. Yes, sir.

Q. Do you know when that house was built?—A. Yes, sir; it was commenced, I think, in 1863—built by a man named Loomis in 1863.

Q. Do you know of its building personally?—A. Yes, sir.

Q. Where the timbers came from?—A. Yes, in part; I don't know where they all came from.

Q. Where did they come from?—A. They came from a stockade on a branch railroad between what is now known as Reed's Station and Gainesville, used as a stockade by Federal soldiers when they were cutting the timber.

Q. Did Bethlehem Church have a spire on it on the 29th of August, 1862?—A. It never has had since I have known it.

Q. How long have you known it?—A. I suppose I have known it since I was eight years old. I went to school there in 1834.

1195 Q. Had it a roof on it on the 29th of August, 1862?—A. No, sir; the Southern soldiers tore the flooring and the inside of the building up to make winter quarters of; and the house had two iron rods running through it. As soon as the supporting timbers were away the house fell.

Q. Have you been to Dawkins' Branch since you testified at Governor's Island?—A. Yes.

Q. Have you looked in the direction of Stuart's Hill?—A. I never knew it was called Stuart's. I looked in the direction of Munroe's Hill, the highest point south of the house.

Q. Could you see it from where the Manassas and Gainesville road crosses Dawkins' Branch at the brow of the hill?—A. The Gainesville county road——

Q. Leading up from Bethlehem Church?—A. Past Bethlehem Church?

Q. Yes.—A. No, sir; it cannot be seen.

Q. Have you been to Stuart's Hill, or Munroe's Hill, and looked in the direction of Dawkins' Branch?—A. Yes, sir; I went to Dawkins' Branch first, and then went from there to Munroe's, and from the highest point—the most southern hill on the farm—it cannot be seen, but it can from a lower hill northeast, or east; it is more east from this highest knob, or hill; probably more east than in any other direction.

Q. Is either of those hills anything of an eminence from Pageland Lane behind them?—A. Yes, sir.

Q. How much of an eminence?—A. A continuation of that ridge crosses Pageland Lane to some extent, though Pageland Lane is not so high.

Q. How much higher is the hill than the road?—A. The highest point on the road?

Q. The road right by it.—A. The nearest point of the road—I am a very poor judge of such things, but I should say 8 to 10 feet higher than the level of the road where the road crosses the ridge.

Q. Do you know the character of the ground about this point, where Pageland Lane crosses the Warrenton and Gainesville turnpike; what is the character of the ground from there toward Browner's, or by the Douglass house; that is to say, is it level, does it descend or ascend?—A. It is undulating, as the land is generally in the neighborhood.

Q. Which is the higher point, Pageland Lane or the Douglass house?—A. The Douglass house is.

Q. Is the ascent gradual or precipitate?—A. The ascents and descents are gradual. There is a considerable valley that looks down west of the Douglass house running north to south.

Cross-examination by the RECORDER:

Q. Is that valley east of Pageland Lane or west of it?—A. East of it; not far from the Douglass house.

Q. Then it ascends from that valley gradually up toward the northwest from the pike?—A. No, sir; it is undulating, as the land

1196 generally is, more or less; but there is no valley between that hill west of the Douglass house and Pageland Lane, not so much of a decline or valley as that west of the Douglass house.

Q. Along *here* west of Pageland Lane is something of a ridge, do I understand you?—A. No. In going up there is not a continuous rise

from Pageland Lane to this; that is, for a hundred yards I suppose; there is a little and then there is slight rise. There is not much of a hill on the east side at all. There is a more precipitous ascent coming east than there is going west.

Q. Where is the highest point of this ridge in the neighborhood of Browner's or Douglass house?—A. The house stands on the highest ridge.

Q. Anything higher behind?—A. I think not on the farm. I think probably there is a hill that crosses a field north of the Douglass house that may be higher.

Q. Is it not a regular ascent beyond and north of the Browner House?—A. No, sir; not north of it; there is a ridge that the house stands on that extends out—well, it is rather more northeast than otherwise; but it extends out to that bit of woods. Indeed, I don't know but it extends through the patch of woods; it is pretty much such a ridge. Indeed, the ridge that the Douglass house stands on is higher east of the Douglass house. I should say it was higher east of the Douglass house than the side that the Douglass house stands on.

Q. Is it not higher northeasterly?—A. Really, I could not say. I think it is about the same; a ridge running northeast.

Q. Is it not still higher up at the corner marked "Stony Ridge," or rather at the corner of the Independent Manassas Gap Railroad?—A. No, sir; I do not know; but it is my impression that the ridge east of the Douglass house is rather higher than that on the railroad-cut. That is the highest point north that I know of before you strike the woods. I could not say which was the highest—the hill east of the Douglass house or where the railroad-cut is.

Q. Right here north of the letter "e" in "Warrenton," on the Warrenton and Gainesville pike; is there not a ridge just about there?—A. There is a hill on the turnpike.

Q. That extends down south?—A. Well, possibly, 200 yards south of Pageland Lane there is a hill; formerly an old house stood on it. Immediately north of it the turnpike passes over the northern part of that ridge; that is the same ridge that extends through Meadowville farm to Munroe place.

Q. You were on Munroe's Hill or Stuart's Hill the other day?—A. No, sir; it has been two weeks or more ago; I think I was there the 17th or 18th of December.

Q. Were you alone?—A. Yes, sir.

Q. From there could you see Thoroughfare Gap?—A. I really cannot say. I did not notice.

Q. Could you see Centreville?—A. I never tried.

Q. Could you see Manassas Junction?—A. I did not try, but I should suppose that Manassas Junction could be seen from there. I know it can from a lower hill east of that; the same hill that the Hampton Cole house stands on.

1197 Q. How as to seeing the country between Dawkins' Branch and the Manassas Gap Railroad?—A. You can see very plain the country, the cleared land where the Manassas Gap Railroad crosses the branch.

Q. You can see that from Munroe's Hill?—A. Yes, sir.

Q. How far can you see?—A. Southwest of it; south of that railroad crossing.

Q. One hundred and fifty or two hundred yards?—A. I thought it was from 200 to 300 yards that you can see a small piece of cleared land there.

Q. From Munroe's Hill?—A. No, sir; from where the railroad leaves that bridge and crosses Dawkins' Branch.

Q. Right along there then for from 200 to 300 yards?—A. I could not judge of the distance, because it is mostly in pine until you get to this piece of cleared land.

Q. That Munroe's Hill is quite a prominent point in the landscape?—A. Yes; of anywhere around there—well, I reckon in an area of a mile I should suppose that it was.

Q. That ravine is not noticed on this map that we are discussing. Down here near Mr. Smith's is the road correctly delineated as it was in 1862?—A. No, sir.

Q. How should it be?—A. The road proper passed within, I should say, ten or twelve steps north of Mr. Smith's dwelling.

Q. Was there a short cut from across?—A. There was any way you chose to take; there was no appearance of a fence, and the travel was wherever there was a piece of ground to travel over.

Q. There was a well here at Smith's at that time?—A. Yes; a well there ever since I can recollect.

Q. How was it equipped at that time?—A. Just an ordinary windlass, chain, and bucket.

Q. This little house that you speak of as having been erected there, do you recollect what time of the year it was erected?—A. I think it commenced in the spring or summer; I cannot say the time. I cannot say positively, because it was just at intervals that he continued work on it until he finished it.

Q. Have you any way of fixing your recollection as to the fact of the year in which it was built?—A. I know it was commenced in 1863.

Q. What is it that fixes that fact in your recollection?—A. It is this: that the man who built that house went back in the spring of 1862 with the Southern army, and he did not return to our neighborhood until some weeks—I cannot say how long—he did not return to our neighborhood until some weeks after the second battle.

Q. What houses, if any, were there?—A. There was no vestige of a house at Mr. Smith's except his dwelling-house and an old kitchen about the south or southwest corner of his dwelling, in a very dilapidated condition.

Q. What was the size of that building?—A. Sixteen or eighteen feet; had a stone chimney at the end of it.

1198 Q. Relative to Bethlehem Church, when did the walls fall in of that structure?—A. I could not say when, because I did not see it until the spring of 1862. I did not even know that of my own knowledge, but I understood that the Southern soldiers had taken the inside woodwork in building their winter quarters.

Q. When did it fall in?—A. During the winter.

Q. During the winter of 1862?—A. Yes. I cannot say the exact month or week that they commenced taking timbers from the house. It was a very old frame building.

Q. Did it have a belfry for a bell? Did it ever have a bell?—A. No, sir. I have known it ever since I was old enough to ride behind my mother.

Q. No bells in the country?—A. No, sir; there is not a church in all that country that I know of that has a belfry on it. I went to school there in 1834.

By Mr. MALTBY:

Q. When did Nealon clear that land?—A. I cannot say; they have owned it about three years.

Q. Was it cleared in 1862?—A. No, sir. In the northern portion there is a valley; in the eastern portion that cleared land that makes down westward into Dawkins' Branch; that was cleared. Mr. Nealon cleared the northern portion of that within the last two years.

Q. You say that the walls of Bethlehem Church fell in during the winter of 1862?—A. Yes; fell that winter.

Q. You mean they were not standing in the spring of 1862?—A. No, sir; they were not standing in the spring of 1862.

The examination of this witness was here closed.

WILLIAM P. HEREFORD, called on behalf of the petitioner, being duly sworn, testified as follows:

Direct examination by Mr. MALTBY:

Question. Where do you reside?—Answer. Prince William County, Virginia.

Q. Near what place?—A. Near Gainesville and Bristoe; between the two places.

Q. How far from Langley's mill?—A. One mile.

Q. Did you ever know of a person by the name of Judge Baker, or other Baker, who resided there in 1862?—A. No, sir.

Q. Did you ever know a family named Baker who resided there?—A. Not one in the county that I know of.

Q. Do you know a house or place called Loretta?—A. Yes, sir.

Q. Do you know who built that house?—A. Yes, sir.

Q. Who did?—A. I could not say who built it; I know who worked on it.

1199 Q. Who was it?—A. Mr. Dickerson.

Q. Who was the owner of the house?—A. Mrs. Phillips.

Q. Did that house have a porch to it?—A. No, sir.

Q. How far is it from Langley's mill?—A. Half a mile.

Q. In August, 1862, who was living in it, if any one?—A. A man named Payne.

Q. Does any one reside there now?—A. Yes, sir.

Q. Who?—A. A man by the name of Story, from Vermont.

Q. Is the house dismantled from what it was in 1862?—A. There are two houses; a small one and a large one.

Q. Has the large one any outbuildings around it?—A. One small house.

Q. In which house does Story live?—A. The small house.

Q. Who lives in the large one?—A. Nobody.

Q. In which house did Payne live?—A. The small one.

Q. Who lived in the large one in August, 1862?—A. Nobody. It was not tenantable.

Q. Why?—A. The boards were all taken off. There were very few on.

Q. Is it tenantable now?—A. No, sir

Q. Do you know of a building called Bethlehem Church?—A. Yes, sir.

Q. Did it have a spire to it?—A. Never did, no time.

Q. Or belfry?—A. No, sir.

Q. Is that building existing now?—A. No, sir; demolished long ago.

Q. Where did it stand?—A. It stood about a quarter of a mile from the Manassas Gap Railroad, on the south side, between Gainesville and Manassas.

Q. When was that destroyed, if ever?—A. 1862.

Q. Any roof on it?—A. Yes, a roof on it then.

Q. At what time in 1862 was it destroyed?—A. I could not say; it must have fallen down.

Q. How far do you live from the place called Loretta?—A. Half a mile.

Cross-examination by the RECORDER:

Q. Where were you in the latter part of August, 1862?—A. At home sometimes, and sometimes roaming around.

Q. During the time of these battles where were you?—A. At home.

Q. Do you know about when these battles took place?—A. Yes, sir.

1200 Q. When?—A. Which one have you reference to?

Q. Well, the battles that took place there in 1862.—A. August 29 and 30.

Q. Where were you then?—A. At home.

Q. How far were you from the road that leads from Bristoe to Gainesville?—A. Three-quarters of a mile, as near as I can come at it.

Q. In which direction?—A. South and east.

Q. This house that you speak of as Loretta, which side of the road is that on?—A. On the north side, coming up from Bristoe.

Q. About how many miles is it from Bristoe?—A. Two and a half, just about.

Q. How many from Gainesville?—A. About the same; might be half a mile further; I do not know; I could not say.

Q. During these times did you see any of Stuart's cavalry?—A. No, sir.

Q. Never saw any of Stuart's cavalry in that neighborhood?—A. No, sir.

Q. Never had any Confederate troops come around there, I suppose?—A. O, yes; I saw plenty of soldiers, both sides.

Q. I understand you to say you never had any Confederate cavalry come to your place; is that what you intend to say?—A. No, sir; I did not say that. You asked me if I ever saw any of Stuart's cavalry. I don't know as I did; but many came there.

Q. During that time, in 1862, did you see any Confederate cavalry?—A. Yes, sir.

Q. During those battles?—A. Yes, sir.

Q. When did you see cavalry?—A. August 30 and 31, and so on.

Q. How about the 28th, 29th, and 27th?—A. I don't think I saw any. I had no business out much from home.

Q. I understand you to say you staid at home when they were around?—A. Very generally.

Q. Did you see any troops in the vicinity of your house on the 27th of August, 1862?—A. No, sir.

Q. On the 28th of August were there any Union troops down in that vicinity?—A. No, sir; there were not. If there were I did not see them.

Q. You mean if you were at home, away off the Bristoe and Gainesville road?—A. Off the road, yes.

Q. Do you know whether there were any Union troops down there on that road on the 29th of August, 1862?—A. I saw some.

1201 Q. On the 29th?—A. Yes, sir.

Q. What time in the day did you see them?—A. Between nine and ten o'clock, I expect.

Q. In the morning?—A. Yes, sir.

Q. Did you see any other troops that day?—A. No, sir; just saw them at a distance.

Q. There might have been others there without your knowing it. In what house did this Payne family live at that time?—A. They lived in a small house a half mile from me.

Q. Was there a piazza, or porch, veranda, or portico, or gallery around it?—A. No, sir.

Q. Nothing at all?—A. Nothing of that sort.

Q. Just a door that you stepped right in from the outside?—A. That is all.

Q. Was there anything of that kind to the large house?—A. No, sir; the large house was not finished, and never was finished.

Q. This small house, is it in the same condition it was then?—A. I reckon it is fixed up a little better.

Q. Was it not blown over?—A. No, sir; never was.

Q. It was not blown down at all?—A. No, sir.

Q. Or destroyed in any way?—A. No, sir.

Q. Do you recollect whether it was plastered inside or not?—A. Yes; it was painted and plastered inside—tolerably comfortable.

Q. In 1862?—A. Yes, sir.

Q. Is it so now?—A. No, sir; not so much. I think it has gone down.

Q. Now there is not any plastering inside, is there?—A. O, yes; some there yet.

Q. That you can see up in the corners?—A. Yes, sir.

Q. Do you recollect whether you went out of your house that afternoon of the 29th?—A. I suppose I did.

Q. When did you hear the battle?—A. 29th and 30th I heard firing.

Q. What was it that you heard?—A. Heard cannon.

Q. How much of the day did you hear cannon?—A. I do not know; I did not take particular notice.

Q. Morning or afternoon?—A. In the afternoon.

Q. Any in the morning?—A. No, sir.

Q. You do not recollect?—A. No, sir; I do not think I did hear anything in the morning.

Q. Do you know of any Union forces being in Bristoe that day?
1202 —A. No, sir; knew nothing about it; I was not out far enough. It was as much as I could do to attend to my own self.

Q. You say you never knew any one by the name of Baker?—A. No, sir; not about there, not in that county.

Q. You do not know whether any one by the name of Baker stopped for two or three days at Payne's during that time?—A. I don't think he did; I don't know.

Q. Why don't you think he did?—A. There was no place for him to stop; the house was very small; there was not room for those who were there.

Q. You never heard of such a man being in that part of the country at all?—A. No, sir; no time—before the war nor since.

Q. Until you have just been asked the question now?—A. Yes, sir.

Q. You had no idea of what you were coming on here for, had you?—A. I suppose I had; to give evidence.

Q. Did you know what you were called on to give your evidence about?—A. No, sir; I knew it was to give evidence for something.

Q. Did you ever have any conversation with anybody on the subject before you came, before you met the counsel?—A. Did I have any conversation with anybody about coming here?

Q. Yes.—A. No, sir, certainly not; I did not want to come here.

Q. You think that no one by the name of Baker or Judge Baker was

at the Payne house because the house was too small?—A. I never heard of the man; if he had been there somebody would have heard of him.

Q. Very likely somebody did. Did you ever talk with Mr. Langley about it?—A. Yes, sir.

Q. He never heard of it?—A. Yes, sir.

Q. Did you ever talk with George Payne about it?—A. No, sir; I don't remember.

Q. Don't remember?—A. No, sir; I never talked with Payne about it.

Q. Then you never talked with anybody as to whether a gentleman named Baker was at that house two or three days?—A. I heard several people talk that there was a man named Baker down there, and several of them came on here, I suppose, for that purpose.

The examination of this witness was here closed.

JOHN T. LEACHMAN, recalled on behalf of petitioner, was examined, as follows:

By Mr. MALTBY:

Question. Do you know a house called Loretta?—Answer. That is the name of a farm, I think. I know it very well.

Q. Do you know who built that large house?—A. Yes; my brother-in-law, by the name of Dickerson, built it.

1203 Q. Where does Mr. Dickerson live?—A. He lives with me.

Q. What is his present condition?—A. He is totally blind and has been for the last six years.

Q. Do you know that large house?—A. Yes; I know it very well.

Q. Is there a small house near it; if so, who lives in it?—A. There was a small house that was built before the large one; it was intended as a kitchen for the other house, very near where the other house stands; Mr. Dickerson built them. He first built the kitchen.

Q. For whom did he build this large house?—A. For Mrs. Cecelia Phillips.

Q. Was there ever a porch to that house?—A. No, sir.

Q. Was any one living in it in 1862?—A. I have no knowledge of any one living in it in 1862; I am satisfied that it was not tenantable then. I saw the house frequently in 1861, and it seemed to have been stripped of the weather-boarding. It sets back a little way from the road leading from Bristoe to Gainesville, to the right of the road somewhat and in plain view of the road; no growth to obstruct the view.

Q. How far is it from Langley's mill?—A. I think not over half a mile.

Q. Did you say you knew the name of a family living in the small house?—A. Yes; I knew the name of the family that lived in the small house; they moved in there in the winter of 1861, and were possibly there in 1862.

Q. Who were they?—A. Named Payne; he had a considerable family of children; they were mostly small at that time.

Q. Are you well acquainted with the neighborhood of Langley's mill?—A. Very well acquainted.

Q. Did you ever hear of a person by the name of Judge Bacon, or a person by the name of Bacon or Baker?—A. No, sir; I never heard any such name in the county; it is a name that I used to know; but I never heard any such name in our county.

Q. I do not recollect whether you testified about Bethlehem Church on your former examination?—A. I did not, I do not think.

Q. Did Bethlehem Church ever have a spire to it?—A. No, sir.

Q. Or a belfry?—A. No, sir.

Q. What was the condition of the belfry in August, 1862?—A. My brother was minister of that church for a number of years; and long prior to the war it began to give way; the walls cracked from ceiling to foundation on both sides; it got in such bad condition that the congregation was afraid to meet in it lest the church should tumble down; and he got two iron rods and plates and ran them through from one side to the other and screwed them together.

Q. Of what material was it?—A. The house was built of brick. Then the congregation met there for some time with comparative safety; but several years before 1861 the foundation had begun to crumble
1204 and the flooring to give way, and it was abandoned as a meeting-house. In the winter of 1861 and '62 there was a pretty considerable force of Confederates camped not a great way from there, and they used gradually to purloin a brick or two wherever they could get one loose to fix their shanties.

Q. What was its condition in 1862?—A. Entirely down.

Q. How high was it to the eaves?—A. It never was over 8 or 10 feet to the eaves.

Q. Do you know of a four-square-roofed house or building, frame, about 10 feet by 8, or 10 feet by 10, in dimensions, near the house called on the map the Smith house at New Market?—A. Yes, there is such a house there.

Q. Do you know when it was built?—A. I recollect seeing Mr. Loomis at work on it in 1863.

Q. Was it standing in 1862?—A. No, sir; not a vestige of it.

Q. Have you been at Dawkins' Branch and looked in the direction of Munroe's Hill from the point where the Manassas and Gainesville road crosses Dawkins' Branch at the top of the ridge, before you get to the branch?—A. I have, on several occasions.

Q. Can you see Munroe's Hill?—A. No, sir; you cannot see, I would say, within a mile of it.

Q. Did you go for the express purpose of seeing whether you could see?—A. I did on one occasion.

Q. Have you been to Munroe's Hill and looked in the direction of Dawkins' Branch for the express purpose of looking in that direction?—A. Yes, sir.

Q. Can you see Dawkins' Branch in the vicinity of the crossing of that road?—A. No, sir; nothing like it; cannot see a country road anywhere along there.

Q. Have you ridden lately on the Manassas, Alexandria, and Warrenton turnpike?—A. Yes, sir.

Q. Were you with Colonel Marshall when he went over that road lately?—A. I was—Charles Marshall, of Baltimore.

Q. Did you see the spot which he pointed out as Lee's headquarters during the daytime?—A. Yes, sir.

Q. A tree?—A. I saw a tree that he said he was up with a glass, and where he said Lee's headquarters were.

Q. Was there a house in the vicinity of that tree, or anywhere in that field?—A. Yes; just down north from there, very near the turnpike, and on the east side of the turnpike formerly stood an old house.

Q. On the easterly side?—A. On the westerly side of the turnpike—no; it was on the easterly.

(Witness refers to the map.)

Q. Which side of the turnpike as you look at it now (tracing
1205 explained to witness)?—A. It was rather southeast of the turnpike.

Q. Can you find on the map about where the place is that Colonel Marshall located?—A. I would think that the position of Colonel Marshall was somewhere just *up here.*

Q. East of Meadowville lane?—A. There is really no lane there at all. There is a road that runs in there, laid down here on the map, that ran in from the turnpike.

Q. In your recent visit to the spot, over which road did you go to it?—A. In the recent visit to it I went up from Manassas, up the Manassas and Gainesville dirt road until we got up above Vessel's; then we came across to Munroe's. *Here* is the road around by Munroe's out to the pike; then we traveled down the pike *here* (indicating).

Q. With reference to traveling on the pike, where was that tree?—A. That tree must have been right off by *here* somewhere, south of the Warrenton and Gainesville pike.

Q. Do you know what was the nature of the ground between the Douglass house and Page Land lane, crossing Centreville pike?—A. Yes. The ground from Page Land lane in the direction of the Douglass house was rather table-land, but descending a little until it got within a couple of hundred yards of where the Douglass house was situated, and then there was a valley that ran down towards this pike; and the Douglass house was over there (indicating); and the ground ascended from this valley up to the Douglass house.

Q. In traveling from Gainesville to Groveton, what is the first point from which you can see Groveton on the pike?—A. It is right here at these woods. (The witness indicates a strip of timber south of "ville" in the word "Gainesville.") Coming down towards Groveton it is rather gradually ascending to the top of the hill, then it falls more suddenly towards Groveton; then you go up the hill again right at Groveton.

Q. What is the nature of this ground in this vicinity?—A. It is a ridge; it slopes to the west and east.

Q. Which way most suddenly?—A. I think it slopes rather more suddenly to the east. There is a cleared field back of this fringe of woods.

Cross-examination by the RECORDER:

Q. What is that hill at Munroe's called?—A. I never heard it called anything but Munroe's Hill, until since the war I have heard it called frequently Stuart's Hill.

Q. How long after the war did you hear it called that?—A. Really I could not say; very frequently. I reckon that very soon after the war it was called Stuart's Hill.

Q. Never heard a reason ascribed for it?—A. Yes; I did. I heard that Stuart was on that hill during the 29th, and I think the family of Munroe, from that circumstance, called it Stuart's Hill; it is a short distance from Munroe's house.

Q. In reference to the rest of the country around there, is it much of an elevation or not very much?—A. That is much the highest point of anywhere around there.

Q. Standing on Stuart's Hill, can you see down in the direction of the Manassas Gap Railroad?—A. Yes, sir.

1206 Q. Can you see down as far as Dawkins' Branch?—A. Yes, sir.

Q. Can you see beyond it?—A. Yes, sir.

Q. Can you see to the right or left of the Manassas Gap Railroad at Dawkins' Run standing on Stuart's Hill?—A. Yes; you can see both to the right and left; but you cannot see the ground to the right; you can see the tops of the trees on that ridge.

Q. How far to the right can you see?—A. Clear out to beyond where

the county road crosses Dawkins' Branch; that is the Gainesville and Manassas road.

Q. From Hampton Cole's can you see the Manassas and Gainesville road as it crosses Dawkins' Branch?—A. No, sir; that is a lower hill, and you could not, particularly at that time—August, 1862; there was a considerable growth of timber in that direction intervening, which was cut down in 1863, I believe. I know it was after 1862.

Q. The timber was cut down——A. On either side of the railroad.

Q. Along where?—A. All along from away down next to Manassas where the county road crosses—where the railroad and the Manassas County road cross—on either side of the railroad, away up above Cole's.

Q. Heavy timber before that?—A. Yes; quite heavy timber. The bodies of some of the trees are lying there now.

Q. Take this opening southwest of Five Forks, on the road running up to Dawkins' Branch, a distance of 100 yards from the railroad southwest—do I understand you to say that that was all covered with timber at that time?—A. No, sir. I stated, in my former examination, that there was a little cleared place there where there used to be an old house; and after that there was some railroad huts built there when they were building that railroad. They were in a dilapidated state at the time of that battle—not inhabited at all. But there was a little cleared field, and when you were in the field, looking out in the direction of Carrico's or Britt's, you could see away up there as far as the Britt house. But that is some distance from the county road leading from Manassas to Gainesville.

Q. I understand you that Colonel Marshall, of Lee's staff, located that tree with his glass?—A. No, sir; I said that he designated that tree as the one that he was up taking observations with his glass.

Q. Can you indicate about where that is, or that he said it was?—A. I think I did a while ago.

Q. Will you try to do it again?—A. I think it was just about here (indicating).

Q. Did you point to the little fringe of timber east of Page Land lane?—A. No, sir; it was not on any point; the timber ran back of it—ran clear down to the turnpike. I think it was just about *here* (indicating). I know it was just above the Cunliffe house. You look down on the Cunliffe house when you are there, the ground descending from there to the plain—almost a valley. It was in front of this woods.

(Point indicated by a pencil mark.)

1207 Q. Is Young's Branch dry in summer?—A. No, sir; that branch is never dry; it has various feeders.

Q. Is this a valley off by Cunliff's?—A. No, sir; that is table-land; wild land either side of it, both east and west.

Q. Have you any recollection when Bethlehem Church fell?—A. It was the winter of 1861, I think, to the best of my recollection.

Q. Might it not have been the winter of 1862?—A. No, sir; it was not the winter of 1862.

Q. How do you fix that?—A. Because I was passing by there during the spring of 1862 and it was down. I used to worship there, and I regretted very much to see it down.

Q. How far down was that church then—to its foundations? Were not some of the walls standing?—A. Well, yes, here and there would be a pile of *débris*, of the old brick, that would crush as the roof came down. I reckon you have seen houses that have fallen before now; it would be a very irregular mass.

Q. But frequently one wall or two walls would stand?—A. Yes; after

the foundations moved the roof came down in the center where the house used to stand.

Q. You say you knew a Judge Baker in 1862?—A. No, sir; I knew Dr. Baker, in Fairfax.

Q. You don't know whether any gentleman of that name ever remained for two days at the Payne house?—A. No, sir; I do not know anything about it; I never heard of it.

By Mr. MALTBY:

Q. With reference to that tree located by Colonel Marshall, do you recollect whether it was on the highest or the intermediate, or a very low point in the field?—A. It was on the side of the highest point of that field.

Q. Then, if the point marked by you is not the highest point, that is not the point?—A. That is not the point.

Q. Do you know Hampton Cole?—A. I do.

Q. When did he first move into that neighborhood?—A. I think it was in 1870; I know it was not earlier than 1869.

Q. Did he own the house called Hampton Cole's before 1870?—A. No, sir.

Q. Did he live there at all?—A. No, sir; he was not known in the county. I know where he did live.

Q. Well, I do not care about that. Did he own any land around the house?—A. No, sir; did not own any land in the county.

By the RECORDER:

Q. You do not know of any one by the name of Cole who owned any house around there?—A. No, sir; that is the only name in the county, I think. This Hampton Cole has a brother; I do not know what his name is, but that is the only family of Cole that I know anything about.

1208 By Mr. MALTBY:

Q. Did he live at the point named Hampton Cole's?—A. No, sir; I can tell you who did live there.

Q. Who did?—A. There was an old colored woman by the name of Lucas who lived there long before 1862, and up to her death.

By the RECORDER:

Q. General Warren was with you considerably at the time he made that map?—A. I think about three days, or a part of three days, I was with General Warren.

Q. Who lived in your present residence in 1862?—A. My father-in-law, William W. Lewis.

Q. Your own name is put on the map as being the present resident in the house?—A. I believe it is. It is always designated as the Lewis-Leachman house.

The examination of this witness was here closed.

Mr. MALTBY. We have no more witnesses here to-night. In consequence of some of the evidence which has been offered by the Recorder we shall want to introduce some documentary evidence to-morrow morning, desiring to arrange it to-night. General Gordon, of Boston, is to be here to-morrow morning, and we wish to examine him in reference to General Banks's corps.

I would like to ask a question, for the convenience of witnesses, as to whether the Recorder proposes to call any one in rebuttal from the

vicinity of Langley's mills. If so, I will keep these witnesses. Does the Recorder intend to call George Payne?

The RECORDER. No.

Mr. MALTBY. Do you intend to call any one?

The RECORDER. I don't know of any now.

The Board then, at 6.20 p. m., adjourned till to-morrow morning at ten o'clock.

THIRTY-EIGHTH DAY.

WEST POINT, *January* 3, 1879—10 a. m.

The Board met pursuant to the foregoing order and adjournment. Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted, with the consent of the petitioner.

GEORGE H. GORDON, called on behalf of the petitioner, being duly sworn, was examined and testified as follows:

Direct examination by Mr. CHOATE:

Question. Where do you reside, and what is your business?—Answer. Boston; counselor at law.

Q. Were you in the service of the United States in August, 1862?—A. I was.

1209 Q. In what army corps?—A. Second.

Q. Under General Banks?—A. Yes, sir.

Q. In what capacity were you serving then?—A. I commanded a brigade in that corps, General Williams's division.

Q. Where was the Second Army Corps on the 28th of August? Begin with the 27th.—A. [Witness refers to diary.] I refer to certain papers that I have, my diary of events made at the time of their occurrence, and certain orders which I have in my possession which were written on the day they bear date. I have an original order here from General Banks, sent to me through General Williams, commanding division, to guide my movements, dated Headquarters Second Army Corps, near Fayetteville, August 27, 1862.

The RECORDER. I should like to inquire what is the object of introducing that?

Mr. CHOATE. The object is to show where General Banks's corps was on the 27th, 28th, and 29th of August, and particularly on the 29th, when you think he was up near the battle-field.

The RECORDER. Is this to show where he was on the 29th?

Mr. CHOATE. Yes, sir.

The RECORDER. Or on the 27th?

Mr. MALTBY. Both. Dobson testified where he was on the 27th, and I think this will contradict it.

The RECORDER. Was General Gordon in the same brigade? First establish that before you go to show where the other portions of that corps were.

Mr. MALTBY. I think the point to establish is the knowledge of this witness as to the movements of the corps, refreshing his recollection from the dispatches and orders that he has, and his diary.

The RECORDER. If it is for the purpose of showing the location of that portion of the corps, with which Colonel Dobson was, all right.

Mr. MALTBY. Yes; that is it.

Q. Now, if you will proceed.—A. This order of General Banks to General Williams is dated near Fayetteville, August 27, 1862; so that it appears on the 27th of August, 1862, General Banks's headquarters, commanding the corps, were at Fayetteville.

Q. Where was the corps itself?—A. The corps itself was at Fayetteville or near Fayetteville.

Q. Can you state what were its movements on the 27th and 28th?—A. Referring to my diary of the movements of the corps I find——

The RECORDER. Can the witness testify to his recollection independent of the diary?

Mr. CHOATE. I suppose so. I did not ask him anything about his diary.

The WITNESS. I am merely refreshing my memory by looking at the notes.

Q. What were the movements of the corps on the 27th and 28th?—A. On the 27th the corps moved to near Bealeton in the morning; in the afternoon they made a hurried march to Warrenton Junction, and on the 28th they marched to Catlett Station in the morning.

Q. Where were they on the afternoon and night of the 28th?—
1210 A. At Kettle Run.

Q. Beginning at Catlett Station?—A. In the morning, and in the afternoon at Kettle Run.

Q. And spent the night at Kettle Run?—A. Yes, sir.

Q. How far is Kettle Run from Bristoe?—A. About a mile and a half.

Q. What were their movements on the 29th?—A. They remained at Kettle Run during the day of the 29th, and then during the night, or towards the night, they marched to Bristoe Station.

Q. Whereabouts in the column, as they proceeded from Kettle Run to Bristoe Station, was your brigade?—A. I think it led.

Q. At what time did your brigade leading get to Bristoe Station?—A. Some time during the night; early in the night of the 29th.

Q. How long did the corps remain at Bristoe?—A. Remained at Bristoe Station during the night and until the morning of the 30th.

Q. Made no movement from Bristoe until the morning of the 30th?—A. Not any.

Q. In any direction?—A. Not any, so far as I know.

Q. When did you leave Bristoe Station?—A. I think I am correct in saying that we staid at Bristoe Station—the corps mainly staid at Bristoe Station—on the 30th. I think I am correct in saying also that on the 30th one division of the corps marched to Manassas and staid there a short time, and then returned to Broad Run. That division was Green's division.

Q. Then the corps, after the return of Green's division, left Bristoe to go where?—A. They left Bristoe Station on the morning of the 31st very suddenly, and made a march, via Brentsville, and crossed Blackburn's Ford.

Cross-examination by the RECORDER:

Q. Have you any recollection of the events to which you have just testified, independent of the memoranda from which you have refreshed your memory?—A. Yes, sir.

Q. Would you permit me to see that memorandum?—A. Well, it is hardly necessary to show it to you, I think. It contains a great many

other matters of no importance. I merely looked at it to refresh my memory. I do not use it at all as testimony.

Q. What command did you hold in Major-General Banks's corps at that time?—A. Commanding Third Brigade, Second Division.

Q. Who commanded the division?—A. General Williams.

Q. Second Division?—A. Yes.

Q. General Alpheus S. Williams?—A. Yes.

Q. Who commanded the First Division?

1111 [Witness refers to the memorandum.]

Q. I would like you to state independent of your memorandum. —A. If you will be kind enough to allow me to answer your first question again: Williams commanded the first division, and I commanded the third brigade of that division.

Q. Then he did not command the second division?—A. He did not.

Q. Who commanded the second?—A. I am not sure whether it was General Green or General Augur. I don't recollect exactly.

Q. Do you refer to George S. Green?—A. Yes, sir.

Q. How many brigades were in his division?—A. My own and General Crawford's. I don't remember what others.

Q. How many brigades were there in the second division?—A. I cannot answer exactly.

Q. Do you recall what general officers there were at that time in the second division?—A. I believe I have answered that. I don't recollect who commanded the second division. If you will tell me who was the commander I think I can recollect.

Q. Assume that General Augur commanded that division.—A. Prince's brigade was in General Augur's division. Prince had been taken prisoner at Cedar Mountain. I don't know who succeeded to his command.

Q. Do you know of any other brigade commanders in that division? —A. Not sufficiently definite now to recall them.

Q. Which brigade was this?—A. The third.

Q. Where was your brigade on the 6th of August, 1862?—A. Somewhere between Little Washington and Orange Court-House.

Q. Where was it on the 18th of August?—A. It must have been somewhere on the route between Culpeper and the Rappahannock, or on the right or left bank of the Rappahannock; just at this moment I cannot tell exactly where.

Q. Where was it on the 21st?—A. It was in the vicinity of the crossing of the Rappahannock by one of the highest points reached by Pope's army in his movement back towards Washington. [Witness proceeds to look at his diary.]

Q. I merely desire to know your recollection, without reference to your diary.—A. It would be impossible about matters which were then recorded to give you the exact point at which it was. I can only answer that it was marching down the Rappahannock River to meet the enemy wherever found.

Q. Where were you on the 24th of August [witness proceeds to look at the memorandum] without looking at your memorandum? I will give you an opportunity afterward.

The witness continues to look at the memorandum.

The RECORDER. I shall have to ask the Board to invite the attention of the witness to my question without looking at his memorandum.

The PRESIDENT OF THE BOARD. The Board would like to ascertain how accurately you can answer without looking at the memorandum.

1212 The WITNESS. I will endeavor then to do so.

Q. Where was your brigade on the 24th of August, 1872?—A. *En route* to Sulphur Springs.

Q. Did you continue your march during that day?—A. On the 24th?

Q. Yes.—A. I can answer you exactly by referring to my diary; but I should answer you perhaps with indifferent exactness by trying to remember the events that occurred seventeen years ago, by saying that we were marching during that day in one direction and another pretty much all the time.

Q. You made an official return of the movements of your brigade, did you not?—A. I never made any official report of the movements of my brigade after the battle of Cedar Mountain during Pope's campaign.

Q. How long afterwards was it before you did make such return?—A. I say I made no official reports of my movements after the battle of Cedar Mountain during Pope's campaign.

Q. After the campaign was concluded, did you make any?—A. None of this portion of the campaign about which you are now questioning me.

Q. Do you know whether or not the division commander made any such report?—A. I do not.

Q. During the movement to which I have just referred, do you recollect whether the corps was all together or not?—A. I remember that the corps was united—moved as a body, and more compactly than any march that I recollect to have made with any other corps.

Q. After the battle of Cedar Mountain?—A. Yes.

Q. And up to the time that they got to Bristoe?—A. Yes.

Q. Will you be good enough now to look at your diary to refresh your memory, if you desire, and tell me, if you can, where your brigade was on the 18th?

Mr. CHOATE. I do not want to interfere, but I do not see the importance of that.

The RECORDER. Well, I am asking the question out of courtesy to the witness. He desired permission to look at his diary.

A. [Looking at memorandum.] It was marching towards the Rappahannock from Culpeper Court-House.

Q. Have you noted how far it marched that day?—A. No; I have not.

Q. Do you recall whether it marched one mile and halted to allow General McDowell's train to move by?—A. My impression is that it marched a very short distance.

Q. Do you know whether or not any part of the corps arrived at Bristoe Station on the 28th?—A. From my own memory, strengthened by notes made at the time, I do not believe it possible that any of the corps reached Bristoe Station on the 28th.

Q. You do not know, however, positively whether they did or
1213 not?—A. No further than I have cause to believe they did not, from what I have stated.

Q. Where was the second brigade, second division, encamped on the 28th of August?—A. I don't know.

Q. Where was it encamped on the 29th of August?—A. I don't know.

By Mr. CHOATE:

Q. Where was your own brigade encamped on the 28th?—A. It was encamped at Kettle Run on the night of the 28th.

Q. At that time, without being able to state where any other brigade was, can you state where the rest of the corps was encamped?—A. The

rest of the corps woke up at Catlett Station or vicinity, and at night moved out towards Kettle Run. The bridge had been destroyed, and it was thought best to collect there and protect the trains and rebuild the bridges.

Q. Was there any time when the corps was encamped that you can tell the particular location of any brigade except your own?—A. It would be impossible, unless I made special observation.

Q. Is that what you mean in answer to the Recorder that you do not know where the second brigade was encamped?—A. Exactly.

Q. But their general location and vicinity you do know, as a part of the corps?—A. Qualified by the answer I gave before, according to my best memory and the records I have of the events occurring at the time.

By the RECORDER:

Q. But you do not know so as to swear positively that the second brigade, second division, was actually at Kettle Run at the time you mention?—A. I did not see them, and I don't know that it was there from seeing it there.

By Mr. CHOATE:

Q. Do you know whether on the 29th, prior to the evening, there were any of the corps at Bristoe?—A. I answer again, as I think I have before, that I feel confident from my memory of the movement of the corps towards Bristoe, and from the place in which I was myself, that none of them were there before the evening of the 29th.

By the PRESIDENT OF THE BOARD:

Q. Were all the brigades of the corps encamped together during the day of the 29th until evening or until they marched for Bristoe?—A. From Catlett's?

Q. From the run. I think you got up as far as that.—A. I mean Kettle Run instead of Catlett's.

Q. Yes.—A. That is my best recollection.

Q. Were you in camp during that day until you marched for Bristoe?—A. We were in bivouac.

Q. You, personally—were you with the troops all the time?—A. Yes, sir.

1214 Q. Could a brigade of troops have marched away from the corps or any expedition without your knowledge?—A. It could have done so; a brigade of the corps could have marched away without my knowledge, certainly. I never had any knowledge that they did, but there is a possibility.

Q. They were not camped in such a way, then, that a brigade might not have marched off without your knowledge? Could a brigade of your own division have marched without your knowledge?—A. I should think not; but a brigade of another division might possibly have done so. I have a record, or a paper written about that time, which I now recall, and some instances connected with it, which leads me to believe that none did march away; that was a communication addressed to General Williams by one of the staff officers of General Banks, in which he quiets the apprehension of the commander in relation to the guns fired on the 29th, the day of that battle, that they were not near us, and they evidently came from the battle-field itself. That led me to believe that no movement was made by Banks' corps from his original line of march, and that an inquiry was made which resulted in a satisfactory explanation.

Q. Had Banks any cavalry?—A. He had not.

Q. Do you know of any pickets or scouts, or anything of that kind, sent off towards the battle-field?—A. I know that on the morning of the 30th——

Q. I speak now of the 29th.—A. I should say it might have been before twelve o'clock on the night of the 29th that a regiment of my own brigade was sent a very short distance in the direction of the battle-field.

Q. On what road?—A. A road where there was a grave-yard. I think it was a road leading from Bristoe Station up towards Gainesville, not towards Manassas.

Q. You say it was before midnight of the 29th?—A. Before or about.

Q. What time did you arrive at Bristoe that evening?—A. It was after dark. I cannot tell exactly the hour.

Q. You are sure that no troops of your corps had preceded you in Bristoe?—A. I am very confident they had not. I am not positive. I think we led.

Q. How far did this regiment of yours go forward?—A. Perhaps half a mile.

Q. Found no troops in that direction?—A. None whatever.

Q. Met no enemy?—A. None.

Q. And saw no indication of other troops of Banks' corps having been in that direction?—A. None.

By the RECORDER:

Q. Was Prof. George L. Andrews, of the Military Academy, commander of one of the regiments of your brigade at that time?—A. He was colonel of the second.

The examination of this witness was here closed.

Mr. CHOATE said: That closes our oral evidence. We expect
1215 Colonel Smith, of the Third Maryland Regiment, who commanded the regiment in which the witness Dobson was, and if he should come in before the case closes we will ask the liberty to question him as to the same matter in reference to which Captain Dobson testified.

We now offer the return of the Fifth Army Corps for the month of August, 1862, on the last day of that month, transmitted under a letter from the Adjutant-General, dated September 4, 1878.

The RECORDER. That is already in evidence. That was introduced at the session in New York City, and it is in print.

Mr. CHOATE. The Recorder has a letter of General Pope to General Grant, being his protest against the appeal of General Porter under date of September 16, 1867. We would now like to put that in evidence.

The RECORDER. I have no letter from General Pope to General Grant, called by the counsel a protest dated September 16, 1867.

Mr. CHOATE. Then I will offer it in print.

Mr. MALTBY. In reference to that letter, I should like to say that I saw the Recorder at his office on Governor's Island on the 17th of December last, and in accordance with what I understood to be the ruling of the Board, and certainly with the offer of General Pope himself, I requested him to cause General Pope, or to request General Pope to signify whether he did or did not write a letter which is printed in General Porter's pamphlet appeal to the President, which letter was dated September 16, 1867, and addressed to U. S. Grant, and signed by General John Pope. We are unable to find the original on application to the War Department, and this is the only way in which we can prove

that letter. Accordingly I made a memorandum at the time, in the presence of the Recorder, which is as follows:

DEC. 17*th*, 1878.

As to letter of Gen'l Pope to Gen'l Grant of September 16th, 1867, Major Gardner cannot produce the original, refuses to send copy as printed in Gen'l Porter's pamphlet to Gen'l Pope for verification or denial, but says he will take measures to satisfy himself about it, and if the Board rules that Gen'l Pope should be questioned about it the Recorder agrees that there shall be no delay resulting from his refusal to send copy to Gen'l Pope, as above.

The RECORDER. That is a very different thing from what the previous counsel has just said. I have not and never did have in my possession any letter from General Pope to General Grant, dated September 16, 1867, and knew nothing about it, until in the interview mentioned in this memorandum it was shown to me in his printed appeal. However, I did write to General Pope and received a reply from him to the effect that that appeared to be substantially the letter that he had written about that time to General Grant. I see no objection to it coming in as a letter from General Pope, provided any such letters or documents or communications written by General Pope after his testimony on the trial were admissible. I have always objected to their admission, and to the admission of any one's letters or documents of the same character. It is merely for the Board to say whether or not this shall come in under the ruling they have made, overruling the objection. But General Pope has no objections, so far as he is concerned, as he has informed me, in consequence of the request which the petitioner, through his counsel made, that anything which he has written or said should be made known. He sent to me his original dispatch-book, which I showed to the petitioner and his counsel; gave it to them for their use, if they desired it. He sent to me all his letter-books containing his communications of that campaign, and he has, as I understand, furnished everything
1216 that he possesses on the subject that would throw the slightest light in any way upon the transactions that are under investigation.

The PRESIDENT OF THE BOARD. The paper will be received.

Mr. CHOATE. The stenographer will please note that it is contained in General Porter's appeal to the President, of 1869, and is the seventh document in that appeal, beginning on page 38.

The document is as follows:

HEADQUARTERS THIRD MILITARY DISTRICT,
Atlanta, Georgia, September 16*th*, 1867.

General U. S. GRANT, *Washington City:*

GENERAL: As I am one of the principal parties concerned in the case of Fitz-John Porter, and as I learn that he is in Washington City seeking a reopening of his case, on the ground that he has come into possession of testimony since the close of the war which has an important bearing on the subject, and as I suppose it is not unlikely that a commission may be ordered to examine that testimony and report upon it, I consider it my duty as well as my right, respectfully to submit to your attention, or that of any commission that may be ordered, the following remarks for such consideration as they merit.

It is unnecessary to set out here in detail the charges and specifications on which Fitz-John Porter was tried and convicted; but I respectfully ask to submit a few remarks upon them, merely to call attention to the points of the case established by testimony and uncontroverted by the defence. The only answer made by the defence to the facts established, is in the way of explanation or excuse.

To the first charge and first specification (the disobedience of orders being admitted by defence), the answer is, the night was dark and there was danger of delay and straggling in executing the order for the march; but it will be noticed, and I ask especial attention to this fact, that no attempt was even made to obey the order It was also established in the testimony on the subject that the whole of McDowell's and Sigel's corps marched nearly all night that same night on a march, but five or six

miles north of Porter's corps, and that during the whole night messengers were passing between my headquarters, to which Porter was ordered, and his own and other corps of the Army.

How valid such an excuse as darkness is, in the face of a positive order setting forth that the presence of his corps "was necessary on all accounts," I leave to your judgment; especially in the light of the fact that not even an attempt was made under such pressing orders and necessities to bring the corps forward. The whole of the circumstances on this point are fully set forth in the testimony.

Although the general plea of "not guilty" was made by the defence to all charges and specifications, yet it was not disputed that the orders set forth in specifications to the charges were received. Neither (except in the case of the joint order to McDowell and Porter) is it claimed that the orders were obeyed. Substantially, the details set forth in all the specifications except the fourth and fifth specifications of the first charge, and the fourth specification of the second charge, remain undisputed, except as to certain phrases and words and the general impression conveyed. The only defence set up was in the way of excuse, and comprises two points:

1st. That the ground in front of Porter's corps was difficult, and that the road on which he was marching was occupied by the right wing of the enemy, who extended across it.

2nd. That the enemy was believed to be in heavy force, and that an attack would have been unsuccessful.

To the first of these points it is only necessary to say that the difficulty of ground, even if it existed, is no excuse for failing to obey an order, and particularly for failing to try to obey it.

The fact established in the testimony that the enemy next day moved over this very ground and attacked our left is sufficient answer as to difficulty of ground, should such a pretext be thought to have any weight.

In relation to the force of the enemy in front of Porter, I beg leave respectfully to submit that that question has no bearing on the subject. Whether there were five thousand or fifty thousand of the enemy confronting Porter is a matter not at all affecting the question of his conduct. A general battle was and had for hours been raging on Porter's right, and almost in his sight, certainly in his hearing. He had in his command nearly a third of the whole Union Army. His corps had been reinforced by Piatt's brigade and numbered quite 12,000 men. One of his divisions contained nearly the whole of the Regular Army.

It was abundantly supplied with artillery, and was altogether the most effective corps on the field. It had marched only three or four miles, and was therefore
1217 by far the freshest corps in the entire Army. Yet it did not fire a gun during the entire battle of the 29th of August, 1862, but lay on the ground with its arms stacked for seven hours of that battle without an attempt either to attack the enemy in front or to come to the assistance of the other troops elsewhere engaged in deadly conflict, and who (as Porter himself says in his dispatch addressed to McDowell and King) he believed were being overpowered and driven from the field.

In the face of a positive order to attack he did not move, and when convinced from the sounds of the battle on his right that that portion of his army was worsted, he retired from the field, not *towards* the army which needed his help, but in the opposite direction, although the road was open to him, and messengers and orderlies were passing to and fro. These are facts established by the testimony and undisputed by the defence. If, in a general battle, a corps or a division commander, receiving a positive order to attack a portion of the enemy's line, has a right to disobey this order on the ground that he does not believe the attack would be successful, I cannot see how any combinations can be made by the commanding general, or how he can expect that any of his orders will be obeyed. How can a corps commander know that the general-in-chief expects his attack to be successful? How can he know that he is not ordered to attack a particular point of the enemy's line in order that sufficient force to resist his attack may be withdrawn from other points to render an assault elsewhere successful? How can he know that his attack is not intended to prevent the enemy's troops in front of him from reinforcing other parts of their line upon which an attack is being made? The effect of an attack by Porter, even had he been repulsed, at any time from midday to eight o'clock on the evening of the 29th of August, 1862, is clearly set forth by General McDowell's testimony in this case. Had Sherman failed to attack the enemy's right at Chattanooga on the ground that the enemy was in strong force, and he would be repulsed (as indeed was the fact), what would have become of Hooker? What, indeed, of the entire victory at Chattanooga? In truth, I feel ashamed to offer any argument to military men on such a matter. They are patent, and as well recognized as the first principles of discipline.

I say, then, that whether the enemy's force in front of Porter was great or small it makes not the slightest excuse for his not obeying his orders; nor can any excuse be found, even admitting the above to be one, for an officer who not only disobeys an order to attack, but absolutely keeps a larger effective force out of action anywhere

during a whole day of battle in his presence. If he was afraid to attack in his front, why did he not bring his corps to the aid of the rest of the Army, which he says himself (in his dispatch to McDowell and King) he believes was being worsted? Why, above all, did he march *away from* instead of towards the Union Army?

The amount of the enemy's force in front of him, I need not further say, has no bearing upon the subject, since he knew not for what purpose an attack was ordered; but it so happens in this case that testimony on that point, unimportant and irrelevant as it is, is at hand. I presume it will be admitted that the best authority as to the amount of the enemy's forces in front of Porter on the 29th of August, 1862, is the report of the officer in command of the enemy confronting him on that day.

This officer was J. E. B. Stuart, of the rebel army. He is now dead, but fortunately his report is to be found in the volume of rebel reports of the campaign, published by the rebel congress. Copies of these published reports are in the hands of the government, and easily accessible.

He (General Stuart) reports that he commanded on Jackson's right on the 29th of August, 1862, with a ridiculously small force of cavalry and some small guns; that he saw a heavy force, which he estimated at 20,000 men, marching upon Jackson's flank; that he was made very uneasy, and sent word back to Jackson; that he disposed of his small cavalry force so as to make as great a display as possible, and made thirty or forty of his men cut brush and gallop up and down the Warrenton turnpike in his rear, so as to make a great dust, and give the impression that heavy forces were on that road; that his ruse was successful, and that the enemy halted and then fell back.

He further states that this force was Fitz-John Porter's corps. I do not pretend to quote literally, but this report can easily be had, and the exact words ascertained. Further than this, Longstreet himself reports of his own corps, the strength of which can be easily ascertained, that he had made forced marches for several days before, and a very long and hard forced march on that day, fighting part of the time with Ricketts's division.

It is certain his corps was in little condition, when it arrived on the field, to contend with Porter's, which, nearly, if not quite, of equal strength, was perfectly fresh, and contained the best troops of the Army. To say at this day that Longstreet's wearied and almost broken-down corps was able to overpower the Fifth Corps of our Army, is the bitterest commentary upon that corps its worst enemy could make, and I have no doubt is utterly groundless. It would indeed be remarkable, if overpowering forces of the enemy were all day in front of Porter, that he was not attacked by them—as astonishing as his own failure to attack.

I cite these facts as to the force of the enemy in front of Porter merely as they
1218 seem to be interesting, and not because they have any bearing whatever upon Porter's guilt or innocence. That was determined upon other grounds, which no military man will fail to recognize.

I beg attention, however, to what will, I think, very fully explain Porter's conduct.

Despatches sent from him to Burnside, sent before and after he joined me, and intended, as he says himself, for McClellan, are to be found on the record of the court-martial. They indicate a state of mind and a hostility and bitterness, I venture to say, unparalleled under such circumstances. They present the grossest and most outrageous violation of discipline and military propriety, to say nothing of ordinary good manners, which can be found on any official record in this country.

That a subordinate officer, in face of the enemy, without knowledge of the number or disposition either of the enemy's forces or our own, and in the midst of a deadly conflict, upon which the very existence of the government and the lives of thousands of patriotic men were at stake, could write such despatches almost surpasses belief. As I said, it indicates a state of mind capable of anything, and these despatches themselves furnish the completest explanation of Porter's conduct which can ever be given.

I take it for granted, as the general facts set forth in the specification of the charges against Porter were and are completely proved, that the testimony he now brings forward upon which to base a reopening of his case is simply testimony as to the amount of the enemy's force in front of him on the 29th August, 1862.

I respectfully submit that such testimony, even if strictly true, has no bearing upon the findings and sentence of the court-martial in his case, and furnishes no reason whatever for reopening the case.

I am, general, very respectfully, your obedient servant,

JNO. POPE,
Bvt. Maj. Gen., U. S. A.

Mr. CHOATE. We next offer a letter from General Pope to the Secretary of War, dated December 6, 1869, on the same subject. It is addressed to Mr. Secretary Belknap.

The RECORDER. Of course, we understand that all those are admitte d over the objection I made at the time.

The PRESIDENT OF THE BOARD. The same ruling. The letter is as follows:

HEADQUARTERS, DEPARTMENT OF THE LAKES,
Detroit, Michigan, December 6th, 1869.

General WM. M. BELKNAP, *Secretary of War:*

GENERAL: I have the honor to transmit inclosed a letter and printed document addressed to the President of the U. S., with the request that they be delivered into his hands, with such remarks as you may deem appropriate. I also send for your own use a copy of the printed matter sent to the President, and I beg, Mr. Secretary, that you will read it and verify, if necessary, the documents & extracts from official reports embodied in it. It is simply designed to set forth briefly the case of Fitz-John Porter as it stands on his own written testimony and the written reports of Stonewall Jackson, Longstreet, and J. E. B. Stuart, who commanded the rebel army in front of us on the day when Porter committed the act for which he was tried and cashiered.

An examination of the whole case, the proceedings, &c., of which are on file in the War Dept., will readily show that this printed statement is the very mildest statement of the case which the facts will justify. The testimony for the prosecution, without altering in any way the main facts therein stated, simply confirm them and add details which only tended to increase the shame and indignation of those who were compelled to listen.

It is understood that Porter is seeking to induce the President to modify his sentence, and produces, to influence him in that direction, certain letters from subordinate officers of the rebel army, asserting that he would have been defeated (overwhelmed, I think, is the word) if he had attacked in compliance with my orders. If this were true, it is not seen how Porter's case would be thereby improved; but, as is shown in the printed paper enclosed, precisely what troops were in front of him, and the impossibility of adding more, from the reports of the rebel officers commanding, such letters as Porter presents to the contrary must have been written on the old theory that one Southern man could whip five Northern men, a theory which, although never acceded to in the North and pretty thoroughly exploded even in the South by the late war, Porter seems very willing to accept in his own case and urge upon the acceptance of the President.

Mr. Secretary, any modification of Porter's sentence, in the face of his own letter and of the facts, would be a dishonor to the Army, an outrage upon every faithful officer who served in that campaign, an insult to the memory of the dead who died because Porter deserted them in their hour of need, and an assault upon the character and honor of the court-martial which tried him, which I feel sure the President could never dream of inflicting. The officers composing this court, many of them the highest and most respectable officers of the Army, a majority of whom have passed more than a quarter of a century in the service without stain or suspicion of stain on their character, have been openly charged, in printed documents, by Porter and his partisans, with having been selected beforehand to commit perjury and convict Porter, whatever the testimony, and that they have received the reward of their infamy.

Any modification or interference with Porter's sentence will confirm in the minds of many honest people all these false and infamous charges, and prove such a wrong to all concerned and such a blow to the discipline and honor of the Army as can never be repaired

I earnestly invite you to examine this whole case, being well assured that the more carefully it is looked into the worse it will prove.

I am, general, very respectfully, your obed. serv't,

JNO. POPE,
Bvt. Major-General, U. S. A.

Mr. CHOATE. Also another letter from General Pope to the Secretary of War, from Detroit, December 11, 1869.

The PRESIDENT OF THE BOARD. It is understood that these are all from the papers furnished by General Pope to the Recorder.

The RECORDER. No, sir; only that of the 16th of September, 1867.

The PRESIDENT OF THE BOARD. Are those original letters?

Mr. CHOATE. Original letters from General Pope to the Secretary of War.

The PRESIDENT OF THE BOARD. Touching the question of General Porter's rehearing or pardon?

Mr. CHOATE. Yes, sir.

The letter is as follows:

DETROIT, *Dec.* 11, '69.

Gen'l W. W. BELKNAP, *Secretary of War:*

GENERAL: In the hurry of sending you the printed statements in relation to Fitz-John Porter's case, some corrections in the proof-sheets, palpable mistakes enough, were not made. I send enclosed corrected copies, which I have the honor to request that you will substitute for the two copies sent to the President and the one sent to you.

I am, General, respectfully, your ob't s'v't,

JNO. POPE,
Bvt. Maj. General, U. S. A.

Mr. CHOATE. Also another letter of December 29, 1869, from General Pope to the Secretary of War, from Detroit:

The letter is as follows:

HEADQUARTERS DEPARTMENT OF THE LAKES,
Detroit, Michigan, Dec. 29, 1869.

Hon. W. W. BELKNAP, *Secretary of War:*

GENERAL: I have the honor to transmit enclosed printed statements of the case of Fitz-John Porter, in which certain verbal inaccuracies in those hitherto sent have been corrected, and a brief addition of particulars necessary to a full statement of the case is made.

I have the honor to ask that these be substituted on the files of the War Dept. for those hitherto sent, which latter I also request may be destroyed.

I also send one copy for file with other papers in the case in the executive department.

I have the honor to be, General, your ob't se'v't,

JNO. POPE,
Bvt. Maj. Genl., U. S. A.

1220 Mr. CHOATE. And still another of the same date from General Pope to General Sherman, addressed as General-in-Chief of the Army of the United States, requesting that the printed statements hitherto sent be destroyed, and the enclosed printed statements substituted "on your files."

The PRESIDENT OF THE BOARD. Have those printed statements appeared here?

Mr. CHOATE. Yes, sir.

The RECORDER. They are what they brought in collaterally on cross-examination.

The letter is as follows:

HEADQUARTERS DEPARTMENT OF THE LAKES,
Detroit, Michigan, Dec. 29, 1869.

GENERAL: I have the honor to transmit enclosed, for the files of your office, a printed statement of the case of Fitz-John Porter, in which verbal inaccuracies in those hitherto sent are corrected, and some particulars added which I think necessary to complete the statement of the case.

May I request that the printed statements, hitherto sent, be destroyed and the inclosed substituted on your files?

I am, general, with great respect, your ob't se'v't,

JNO. POPE,
Bvt. Maj. Gen., U. S. A.

Gen'l WM. T. SHERMAN,
General-in-Chief, U. S. A., Washington.

Mr. CHOATE. I now call the attention of the Board to a memorandum or brief sent to the Board in June, 1878. It bears the indorsement of the Adjutant-General's Office, June 15, 1878. I ask the Recorder whether he identifies it as emanating from General Pope. When it was brought to the attention of the Board and the Recorder at the opening of the first session, the Recorder, if my memory is correct, stated that he had no doubt that it came from General Pope, but that as General Pope was

likely to be here as a witness, he did not wish then to state definitely about it. (See page 7 of the Record.) He says:

I have no knowledge of where this document came from—I may only indulge in surmises with the counsel for the petitioner—but I presume, after it was received in the office of the War Department, it was sent to me in the usual course, the same as the names of several witnesses which I have already furnished the counsel for the petitioner. It is really not in the case; it is a sort of suggestion, probably from some authority, as to the method of procedure on my part in bringing out the evidence, if there is any.

The Board will recollect the indorsement:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, June 15, 1878.

Respectfully referred to Maj. A. B. Gardner, judge-advocate, U. S. A., Recorder of Board appointed by S. O. 78, April 12, 1878, from this office.

It is understood that Gen. Pope wishes Maj. T. C. H. Smith, paymaster, U. S. A., to attend the trial.

The RECORDER. The Board has already seen this statement that was sent to me, and of which I furnished a copy to the other side, just as I did the names of the witnesses that I received at that time. But whatever has been said to me, or sent to me, in reference to my manner of conducting this case on the part of the government (which may be considered in the argument as a client) the counsel on the other side have nothing to do with any more than I have a right to ask for any letters which may have been sent to them by those who were formerly witnesses. As I said before, if the gentlemen can show by bringing
1221 General Pope here that he is the author of any paper concerning this case they are at liberty to do so.

Mr. CHOATE. I did not know that there were any private relations in this respect.

The RECORDER. I insist that the line of argument which the gentleman is indulging himself in on this particular subject is not proper.

The PRESIDENT OF THE BOARD. What is the desire of the counsel in regard to this paper?

Mr. CHOATE. I will state that not being aware that there was any private relation between the Recorder and the case, I suppose that if he, as Recorder, has been informed of the authorship of that paper, we have a right to have that fact stated by him and placed upon the record. The paper, viewed in the light of the facts now before the court, is an exceedingly interesting and unique one. It is an argument supposed I think to be the best argument that can be made against the petitioner. We have every reason to believe that it is in General Pope's own style, and that there are certain ear-marks about it which, when we come to call the attention of the Board to them, will identify it beyond all question as his. But I submit that if the Recorder has been authoritatively informed and knows the authorship, he is bound to state it. If he should decline, and the Board should not think fit to ask him to do so, then we shall ask this, that the War Department will furnish the Board with the written communication from General Pope by which it understood that General Pope wished Maj. T. C. H. Smith, paymaster, to attend the trial. There can be no difficulty in obtaining that, I suppose, by the request of the Board to the War Department. I do not think, if the Board please, that the War Department would put off upon it a purely anonymous communication. That is not the method in which governments, I should suppose, would deal with boards organized as this is for the purpose for which it is organized. Let me call further attention to a certain fact about it. There are certain historical docu-

ments which have come from General Pope which we shall offer, in which there are certain passages identical with certain passages in this, and in this they are not given as quotations, but as the work of the author of the whole paper. Now, as it is quite manifest from the learned Recorder's manner, for his candor makes it impossible for him to conceal the truth, that this is General Pope's production, I hope that he will say so, and save us from the trouble of further communication with Washington about it.

The RECORDER. I suppose that the next request of the counsel will be that all the communications which I may have received from various quarters, from officers and citizens, as to what they know about this case, shall also be presented in the same way. A memorandum was sent to me, as everything else has been sent to me in the same connection that came into the War Department from individuals from any quarter for my information; names of witnesses have come to me from various quarters, and in that way I have been enabled to bring witnesses here who were very much surprised that I should know how they were witnesses. But I furnished the counsel on the other side with all those names that came to me in that way. The memorandum to which he refers, which I furnished him as an act of politeness, he assumes is General Pope's. There is no ground for that assumption in anything in the paper. There are several millions of people in this country who can make arguments in this case, good, bad, or indifferent. It is certainly not in his handwriting, nor that of any person with whose writing I am familiar.

But I do not doubt in the least that General Pope has said at some
1222 time or other, either to some officer or to some official of the government, that if this case was ever investigated as he had requested the President formerly to investigate it in precisely the manner that it is being investigated now, so far as the appointment of a board of officers is concerned, that Major Smith, who was conversant with that campaign and an officer of the Army, should be summoned as a witness, believing that he could give material evidence, as he was a prominent actor in it, was at headquarters and authenticated most of the dispatches that were used in General Pope's official reports, and therefore was an eminently proper person to be summoned for the information of the Board. I did summon him. He came here and testified, and was cross-examined. That is the end of the matter. I will not consent that any memorandum from any quarter whatever, not authenticated by any signature and not shown to be an emanation from any person concerned directly or indirectly in this case, shall be introduced in violation of the rules of evidence. I therefore shall object to any such proposition.

Mr. CHOATE. We are not discussing whether it shall be received in evidence or not. It was ordered in long ago by the Board. What I want is the authorship of it. If that is private property on the part of the government, we have no right to it. But we have yet to learn that there is anything such as private property in this case as to matters material to the truth. If the Secretary of War knows, we have a right to know; if the Recorder knows, we have a right to be informed from him or from some source or other. We trust that the Board will see that we have that information. I would like to ask the Recorder if he has the letter from the War Department which inclosed it? That may solve the whole difficulty. If the Recorder has the letter of the 15th of June, 1878, transmitting this, it will probably answer the question.

The RECORDER. I have no letter. All these papers were sent to me as Recorder.

The PRESIDENT OF THE BOARD. It was decided, I think, at the time

that paper was presented, that for the time being it was regarded as a suggestion to the representative of the government.

Mr. CHOATE. But placed upon the record, as I understood.

The PRESIDENT OF THE BOARD. Placed upon the record, perhaps. It was treated for the present in that light.

Mr. CHOATE. That the Board will take it into consideration. That is what was said. Now, then, the Board takes it into consideration, and we ought to have all the information about it that the government is capable of giving. We certainly protest against this idea of privacy of any of the acts or relations of the Recorder as Recorder.

The RECORDER. The gentleman is mistaken in my position, as decided by the Board. I keep the record for the Board. I am the clerk of the Board for the Board's business. The Board put on me the responsibility of acting, as its President has just remarked, as the representative of the government, in order that there should be judicial impartiality in the consideration of this case. Acting in that capacity, I have sought for information in every quarter, and, as counsel for the government, the gentlemen have no right to inquire into what I have done, any more than I have a right to inquire into what they have done.

The PRESIDENT OF THE BOARD. It is understood that the question mainly has been answered by the Recorder to the effect that he does not know the author of the paper.

Mr. CHOATE. Then I ask that the inquiry be made of the War Department as to the source from which it came.

1223 The PRESIDENT OF THE BOARD. It is the opinion of the Board that it is not necessary. It will be received as it stands.

The objection of the Recorder overruled.

The document is as follows:

MEMORANDA CONCERNING 2ND BULL RUN BATTLE.

The new evidence of F. J. Porter in his case consists mainly of the letters and statements of Confederate officers to the effect that Longstreet was in superior force in front of him, and that if he had attacked he would have been repulsed, Longstreet stating that twenty-five thousand men would have been necessary to make a successful attack on him.

Whilst the truth or untruth of these statements does not in the least affect the finding and sentence of the court-martial which tried Porter, it may be well, in the interest of history, to examine into the matter, so as to make it clear that nearly, if not quite, twenty thousand Union troops were actually with Porter at the time specified, when he ought to have attacked Longstreet, and for hours afterward. This fact does not, however, in the least affect the verdict in Porter's case, as he was charged not only with failure to attack Longstreet, but that he did not fight at all anywhere, and actually deserted the field and fell back toward Manassas Junction, in a direction opposite to the army engaged in battle in his sight and hearing, without firing a gun; in short, that he deserted his comrades engaged in battle because he believed they were being defeated, and put himself out of the way of giving any help whatever (see his letter to McDowell and King—part of proceedings of C. M.).

These facts were established by testimony before the court-martial, and are not disputed by any one.

At 12 o'clock m. on the 29th of August, 1862, a severe battle was going on, and so continued until dark, between the right wing of the Union Army and the Confederate forces under Gen. T. J. Jackson, at Groveton, on the turnpike leading from Centreville to Warrenton, Va.

The line of battle was perpendicular to the turnpike, the left of our force and the right of the enemy's being just south of that road.

The corps of McDowell and Porter (except Ricketts' division, but plus Piatt's brigade of Sturgis' division had been attached to Porter's corps), containing nearly half the Union Army within the field of battle, had marched from Manasses Junction along the road thence toward Gainesville, which lies on the Warrenton Pike, just at the point where the pike is crossed by the road; these two corps were marching on from Manassas Junction.

At 12 o'clock m. when the battle of the right wing was at the hottest, these two corps, Porter's leading, had reached a point west of the Bethlehem Church. At tha$_t$

church the road to Sudley's Springs branched to the right (north) and passed directly through the lines of battle.

The orders of these two corps, which directed their march from Manassas Junction upon Gainesville, are given in the testimony before the Porter court-martial, and required their march to be continued toward Gainesville until they connected by their right with the right wing of the army. When they reached Bethlehem Church, about half way between Manassas Junction and Gainesville, they were in full hearing of the battle going on on the right, and found their advance in presence of a force of the enemy.

McDowell, finding the whole road in front of him toward Gainesville blocked up by Porter's corps, which was stretched out in column, and knowing how necessary it was for him, as well as Porter, to go immediately into action, told Porter to attack at once where he was, and that he (McDowell) would take the Sudley Springs road, on which the rear of Porter's column rested, and join the battle on the right. That McDowell would have attacked, as he told Porter to do, had he been in front, there is not the faintest shadow of a doubt.

When McDowell told Porter to put his force into action, the two corps of McDowell and Porter (except Ricketts' division, but plus Piatt's brigade of Sturgis' division) were together, the former in rear of the latter. The enemy was so near that McDowell says in his testimony that it was not a question of going forward at all, but simply of turning to the right in the direction of the battle.

At that time and for two hours afterward McDowell's corps was still with Porter, or so near that its rear as it marched to the right up the Sudley Springs road from Bethlehem Church must have been still in view, so that Porter's attack could and would, if necessary, have been supported by McDowell. At the time Porter's attack, by every rule of warfare and of military obligation, should have been made, and for hours afterward there were present on the ground not much (if any) less than twenty thousand Union troops, viz, the corps of McDowell and Porter, less Ricketts'
1224 division, but plus Piatt's brigade of Sturgis' division, which was with Porter's corps in addition to his own two divisions.

McDowell's corps, simply because it was in rear of Porter's and could not get to the front at that point, passed Porter's, and moved off to the right, so that it could and did get into action, McDowell telling Porter to put in his corps where he was.

The highest estimate of Longstreet's force but little exceeds the Union forces present with Porter when he should have made the attack.

2d. It is of all easy things one of the easiest to get opinion from your opponents that if you had done so and so, so and so would have been the result. I presume for every attack that was not made, and every battle avoided during our whole civil war, it would be a matter of course to get opinions of the enemy that if the attack had been made it would have been repulsed; or that if the battle had been engaged the aggressive army would have been defeated. Such opinions are cheap, though probably sincere, and they were given in advance in every case I know—Island No. 10, Vicksburg, Chattanooga, Atlanta, Richmond, everywhere, indeed, in advance of the subsequent transaction the opinion that all such movements would be fatal to the Union Army was easily obtainable, and, in truth, quite openly proclaimed.

The value of such opinions in such a case as this does not seem to be great, and to accept them as evidence of anything except natural prejudice or bias would be a novel practice.

3d. The estimates about the strength of armed forces is, of all things, one of the most unreliable. In this case Dr. Guernsey, who writes in Porter's interest, puts Longstreet's force on the ground on the first day of 2nd Bull Run at forty thousand men, which he gives after careful examination, as he says, of Confederate records and reports. On the other hand, Gen. Wilcox, who commanded a division in Longstreet's corps, says, in a letter to Porter in answer to one received from Porter, that Guernsey is mistaken, as he thinks Longstreet's force could not have been greater than about twenty-one thousand men; but, to complete the muddle, here at last appears Col. Taylor, the aid-de-camp of Gen. Lee, and who has just written his life, of course as a trumpeter for his chief, who asserts positively that Lee's whole force during the second Bull Run battle did not exceed forty thousand men. Somebody must be badly deceived.

When Porter should have attacked, the Union force present with him was quite competent to deal with any force of the enemy in his front; but even if it had not been, a vigorous attack must of necessity have greatly relieved the troops engaged on the right.

As to Porter's duty to go into action with his orders, and under the circumstances, there cannot by any possibility be a question with military men.

If it be necessary for a subordinate commander to say, in excuse for wholly keeping out of battle going on under his eyes, that he would, in his opinion, have been repulsed, as he believed the enemy stronger than he, it is difficult to comprehend how the general-in-chief could even engage in battle at all, as he could not know who of his subordinates would fight and who would not.

It is not necessary to enlarge upon so plain a proposition. The fact that when he should have gone into action, and was told to do so by McDowell, and for two hours afterward, there were present with him for service in any attack which he might make nearly the full force acknowledged by Longstreet himself to be sufficient for a successful result, viz, twenty-five thousand men, seems to be lost sight of.

The whole testimony of McDowell before the court (he was recalled several times) is essential to the case and worthy of careful study. His opinion as to the ground and of the situation, and what would have been the result of an attack by Porter, is based on the fullest knowledge, and is given by as competent an officer to judge of such a matter as any that can be found in or out of the Army, and is far more weighty, given as it was under oath, than loose statements and opinions uttered years after the facts transpired.

The greater force of the enemy in front of Porter, the greater the necessity of his aid; and if the whole Southern Confederacy had been before him, it only made his desertion of the rest of the army the more shameful.

It will be observed that not only did Porter fail to fight at all, but he absolutely retreated in the direction of Manassas, away from the army on his right, which he believed was being defeated, so as to put himself still farther out of the way of giving any help to it. He retreated from the field and in the opposite direction to where he was needed, and this, too, in the face of the fact that the road taken by McDowell to join the right wing, engaged in battle, was open to him. He did not wish to help, and his dispatches set forth in his trial make it plain.

As nothing was heard from him up to four and one-half o'clock that afternoon, positive orders were sent him to attack at once, and the very contingency of a repulse was anticipated and provided for in the order itself, which required him, if forced to fall back, to do so in the direction of the rest of the Army, and not in the opposite direction.

1225 McDowell testifies that he met the officer bearing this order between Bethlehem Church and the field of battle; that he opened and read the order, and that it exactly coincided with his judgment and was a repetition to Porter to do precisely what he himself had told him to do.

At an hour, therefore, subsequent to 4.30 o'clock p. m., McDowell was still between Porter and the field of battle on the right; that is, he must have been less than three miles from Porter's corps. The statement that Longstreet was held in check by Porter is sufficiently answered by Longstreet's own official report, in which he says that Porter began to fall back as soon as his three brigades appeared, and that he withdrew them and threw his whole force against the rest of the Army.

The force Longstreet speaks of as moving to the right was McDowell's corps, which he evidently mistook for part of Porter's.

The difficulty of ground seems a pitiful plea to men who carried Vicksburg, Missionary Ridge, and the country between Chattanooga and Atlanta. The idea of any of the ground in the vicinity of 2d Bull Run battle-field or anywhere in that vicinity being impracticable for troops is perfectly absurd. There can be found no better ground for a battle in this country than that embraced between Bull Run on the east and the Thoroughfare Gap range on the west.

In brief, Porter and McDowell, with their two Army corps, less Ricketts' division, but plus Piatt's brigade, of Sturgis' division, were ordered to march on a road from Manassas Junction, which intersected the Warrenton Turnpike from Centreville at Gainesville. This road made a small angle with the turnpike, on which the right wing of the Army had marched.

When these two corps reached Bethlehem Church, they found themselves in presence of a force of the enemy, and on their right the right wing of the Union Army was engaged in a severe battle almost in their sight, and fully in their hearing. They had orders to pursue that road until they connected, by their right, with the right wing of the Army.

It is not necessary to discuss the obligation to go into battle at once under these circumstances, since there can be no doubt of the duty of these troops to do so.

There were present with Porter, whose corps was leading, nearly twenty thousand men. Longstreet admits that an attack by twenty-five thousand men would have been successful.

Not only did Porter make no attack at all, but he retreated from the field in the opposite direction from the rest of the Army, without fighting at all, and, in fact, deserted it in the midst of a battle, which he says himself he believed was being lost.

These are the facts which he seeks to set aside by the mere statements of officers of the enemy, that he would have been repulsed if he had gone into battle.

That he did not intend to take any part in the battle, and was under the control of an animus very hostile to any success to the Union Army on that field, is shown clearly:

1st. By his despatches (which he calls private) to Burnside and others for several days before and up to the very morning of the battle, in which he makes statements, assertions, and intimations disgraceful and unfounded. These despatches form part of the record of his court-martial.

2d. By the testimony of General McDowell before the court, in which he says that when he told Porter to put his corps in where he was, Porter replied that he could not go anywhere without getting into a fight, to which McDowell replied, "I thought that was what we came here for."

This memorandum only gives the facts set forth in detail in the record of the Porter court-martial, which facts he does not deny, but seeks to justify.

Mr. CHOATE. We next offer a letter of General Pope to General Sherman, dated October 23, 1878, transmitted to us by letter from the Adjutant-General, under date of December 30, 1878, explaining the unfortunate mistake in regard to the extracts from General Jackson's report of the events of the 30th of August, 1862, in attributing them to the 29th.

The RECORDER. This appears to be a copy of a communication alleged to have been written by General Pope on the 23d of October, 1878, and sent by the Adjutant-General to the petitioner in reply to a specific request for it from the petitioner. In the course of this case, on one or two occasions, I have found that where I have requested copies of documents, copies have also been received by the petitioner as well as by myself. I have not been furnished with this from the War Department, or rather the Adjutant-General's Office, and I should like to ask of the counsel the purpose of introducing it.

Mr. CHOATE. The last statement, I think, from General Pope, as to anything relating to the merits of this case, in substance asserts
1226 the correctness of the extract from Jackson's report of the 30th as of being really the 29th. He does not see the mistake yet.

The RECORDER. I should like to ask the counsel if he positively asserts that General Pope says of his own knowledge that that applies to the 29th.

Mr. CHOATE. No; but there is a long and somewhat labored argument in it, carrying that implication very directly, setting forth the extract, with the certificate which was appended to it, as his authority for it, that he entertained no doubt of its correctness, and containing somewhat labored sentences which carry that impression in the very strongest manner—made to the government.

The RECORDER. Does he not say that he never read the reports in question, and had no knowledge of the subject more than what was contained in that certificate of the Adjutant-General which we have on file as part of this record?

Mr. CHOATE. The letter will show.

The RECORDER. Because if that is the case the letter is not admissible.

Mr. CHOATE. I suppose that that comes within the ruling of the Board made at Governor's Island, in view of the attitude taken by General Pope in regard to coming to be examined, that any authenticated written or printed statements from him relating to anything involved in the merits of the case would be pertinent.

The RECORDER. It is, as I have said. By looking at the letter it will be seen that General Pope declares that he had no knowledge, or that he had never seen any reports of Confederate officers beyond the certificate of the Adjutant-General.

Mr. CHOATE. He says it has never been suggested to him that there is any mistake.

The PRESIDENT OF THE BOARD. To whom is this letter addressed?

Mr. CHOATE. To General Sherman, of the United States Army.

The PRESIDENT OF THE BOARD. And furnished to the petitioner by General Sherman?

Mr. CHOATE. Furnished to the pe tioner by General Townsend; it having, apparently, found its way into the archives of the War Department from General Sherman.

The RECORDER. I think that the War Department would certainly have furnished the communication to me if they thought it of any importance. They appear to have furnished it to the petitioner at his own request.

The PRESIDENT OF THE BOARD. The objection is overruled. The paper will be admitted.

The paper presented on behalf of the petitioner is as follows:

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kansas, October 23, 1878.

General WILLIAM T. SHERMAN, *U. S. Army:*

GENERAL: Much has been said, and in a way to convey the idea that it has something to do with the present inquiry into the F. J. Porter case, concerning an extract from Stonewall Jackson's report, used in a brief review of the Porter case written by me in 1869, which extract is asserted to relate to the 30th and not to the 29th of August, 1862.

Although General McDowell states in his testimony before the board now in session in Porter's case, that he made this extract and sent printed slips to me, I still think it proper fully to explain my connection with its subsequent use in the paper (brief statement) above referred to, and my authority for using it.

In December, 1869, in answer to some statements made by Porter, and in his
1227 behalf, I wrote a statement of his case as I understood it, and in that paper inserted extracts from the official reports of Stuart, Longstreet, and Jackson. The extract from Jackson's is the only one in question. I furnished this paper (brief statement) to the persons mentioned in my letter subjoined and to some others. Shortly after, and I think about the same time, I saw in the Army and Navy Journal a statement from Porter that the extract from Jackson's report related to the 30th, and not to the 29th August, 1862, and received a letter from General Smith stating the same thing as his opinion from the reports. I at once sent the printed extracts in question to Col. E. Schriver, Inspector-General, and at the time acting as confidential secretary to the Secretary of War, with a request that he would verify the extracts as true extracts from the official reports in question for the operations of the 29th August, 1862.

My letter is as follows:

"HEADQUARTERS DEPARTMENT OF THE LAKES,
"*Detroit, Michigan, December 30th,* 1869.

"MY DEAR GENERAL: I send enclosed a copy of the printed statement of Fitz-John Porter's case, which I forwarded to the President, General Sherman, and the Secretary of War, and which you will doubtless receive officially for file. It is not my purpose for the present to publish it, though the time will come when its publication may be necessary, or rather judicious. If there be any answer to it, I confess myself unable to see what it can be.

"The extracts from the official reports of rebel officers I consider (as you will) of no particular value in the case. Indeed, they rather weaken than strengthen it, and for this reason, viz: They show an entirely insufficient force in front of Porter to have resisted his attack, whereas precisely in proportion to the enemy in the field, precisely in that same proportion was the aid of Porter's corps necessary to the rest of the Army, and his desertion dastardly and inexcusable to the same degree.

"Just in proportion as he proves the enemy to have been in large force in the field, he magnifies and intensifies his own crime. His arguments, based on a heavy force of the enemy in his front as an excuse for his retreat, are precisely of the same character as the excuse he also made for retreating (that he believed the rest of the Army was being defeated) before the enemy.

* * * * * * *

"The enclosed statement is for your own use. As I have used the extracts from these rebel reports sent me by you or McDowell without myself ever having seen these reports, I wish you would have them verified as true extracts from the reports of those officers concerning operations of that day—August 29, '62.

"I send you two or three of the printed extracts, upon which I wish you would have the proper certificate made. I only wish you would have the proper certificate made. I only want them for file with my own papers.

"Very truly, your friend,

"JNO. POPE.

"Gen. E. SCHRIVER, U. S. A.

"True copy.

"L. H. PELOUZE,
"*Assistant Adjutant-General.*"

"WASHINGTON, *7th January*, 1870.

"MY DEAR GENERAL: I had the pleasure to receive your note of the 30th ultimo with your printed statement in the F. J. P. case. I had seen the official copies and read the argument with great satisfaction. I am glad, however, to have the copy you kindly sent for my own use. General Townsend would like a copy also, if you have one to spare.

"I am now able to enclose the printed extracts from the rebel commanders' reports of engagements, certified to by the Adjutant-General, after making a few unimportant corrections. I have reason to believe there will be no favorable action on F. J. P.'s application for a remission of any part of the sentence of the court in the case.

"In great haste, most truly, yours,

"ED. SCHRIVER.

"Major-General JOHN POPE, &c., &c."

This, then, is my authority for using these extracts, and only that from Jackson's report is in question.

Having, therefore, the certificate of the Adjutant-General to the correctness of these extracts, as used, I entertained no doubt of the correctness of all of them. Nevertheless, I suppressed as far as I could, and I believe entirely, the first copies of the "brief statement," and inserted the note at the bottom of the "brief statement" as it now stands:

1228 "NOTE.—Fitz-John Porter asserts that the above extracts from Jackson's report refers to the 30th and not the 29th of August, 1862. Printed slips containing these extracts were forwarded to the War Department for verification when the printed statement of which they are a part was finished, and they were returned to the writer certified by the officer in the department having charge of the rebel records as true extracts from the original reports of these rebel officers for operations of August 29th, 1862. Porter is therefore probably deceived. The case against him, however, set forth in the extracts from Stuart's and Longstreet's reports, which are not disputed, is complete."

Having thus called attention in the statement itself to Porter's assertion that the extract from Jackson's report referred to the 30th and not the 29th of August, 1862, and given my authority for using it, and my belief that Porter was mistaken, and an additional statement that the case was complete without considering the extract from Jackson's report, so that it was and is practically out of consideration, I supposed, and still suppose, that I did everything demanded by fairness and justice.

The "brief statement," with the above note inserted at the bottom of it, was then filed in the War Department, and copies were furnished Colonel Schriver, General Townsend, and others; so that the note at the bottom has been known to them for eight years past, and neither of these officers has ever suggested to me even that there was any mistake about them. The opinion of Colonel Smith and the assertion of General Porter are, therefore, left to be balanced against the certificate of General Townsend and the letter of Colonel Schriver; and whatever the facts may ultimately prove to be, I do not see what I have to do with it.

It is proper to say that the "extracts" in question were sent me in 1867 from Washington—I do not know by whom—but I knew nothing of their being prepared nor who did it, never myself having asked anything of the kind, and being without knowledge that such statements were in existence. I have never seen the reports in question to my knowledge at all, and certainly never have made any examination of them.

So far as I am concerned, therefore, in this question, the letters embodied in this paper and the enclosed attested copy of General Townsend's certificate are sufficient.

I am, general, very respectfully, your obedient servant,

JNO. POPE,
Brevet Major-General, U. S. A.

A. G. OFFICE, *Dec.* 30, '78.

Official copy.

R. H. DRUMM, *Asst. Adjt. General.*

Mr. CHOATE. We next offer a certified copy of the same letter in print, with alterations, certified by W. J. Volkmer, aide-de-camp to General Pope. This is a printed copy furnished for publication; and this accounts for the manner in which General Porter learned of the existence of the original. Upon receiving this printed copy he obtained from the War Department the original letters introduced.

The RECORDER. As I understand, the signature which the counsel offers as the certificate of Mr. Volkmer is not Mr. Volkmer's signature.

Mr. CHOATE. Whose is it?

The RECORDER. I do not know, I am sure. I am quite familiar with Mr. Volkmer's signature, as it was attached to all the dispatches of General Pope furnished for the information of counsel on the other side, if they desired to use them. That is not a proper mode of introducing documentary evidence, especially when there is no notice. The other objections are, second, that even if Mr. Volkmer does certify that to be a true copy, it does not bind General Pope; and, third, it is not shown that General Pope has published it, or printed it, or knows anything about it.

Mr. CHOATE. If there is any doubt about it, I ask the Recorder to procure one for us from the War Department.

The PRESIDENT OF THE BOARD. I have sent for some signatures, which we will compare with it presently.

Mr. CHOATE. There will be no difficulty about verifying it.

The RECORDER. I should like to ask the counsel the object of introducing this.

Mr. CHOATE. The same object as the last document.

1229 The RECORDER. As coming from General Pope?

Mr. CHOATE. Yes.

The RECORDER. That is most extraordinary. This is something printed, not from the files of the War Department, but certified as a true copy, with a signature attached not Mr. Volkmer's.

The PRESIDENT OF THE BOARD. That is to be ascertained.

The RECORDER. If we have the original here from the file of the War Department, why should we ask for a printed copy as well?

Mr. CHOATE. Because the printed copy has very serious alterations; the one furnished for publication is different from the original.

The RECORDER. Can the gentleman prove that it has been published by General Pope?

Mr. CHOATE. There it is.

The RECORDER. No; that does not follow.

Mr. MALTBY. You might telegraph to General Pope and ask.

The RECORDER. You can call him as your witness. I object to it.

Mr. CHOATE. We will hold that for the present.

The PRESIDENT OF THE BOARD. That will be held for the present, until the verification of the signature.

The Board having compared the certification of Mr. Volkmer on the document offered with some certifications by him on file of general court-martial orders from headquarters of the Department of the Missouri, on file at West Point, overruled the objection and admitted the letter. It is as follows:

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kas., October 23rd, 1878.

General WM. T. SHERMAN, *U. S. Army:*

GENERAL: There has appeared in telegrams to some of the newspapers a statement that charges have been filed against me in relation to an extract from the report of Stonewall Jackson of operations during the second Bull Run battle, which extract was used by me in a printed paper which I prepared and, to some extent, distributed nine years ago. The object of making and publishing these charges at this time is plainly to be seen, and it is probable that their publication has accomplished the author's purpose.

Although General McDowell states in his testimony before the Board now in session in Porter's case that he made this extract and sent printed slips to me, I still think it proper fully to explain my connection with its subsequent use in the paper (brief statement) above referred to, and my authority for using it.

In December, 1869, in answer to some statements made by Porter and in his behalf, I wrote a statement of his case as I understood it, and in that paper inserted extracts from the official reports of Stuart, Longstreet, and Jackson. The extract from Jackson's is the only one in question. I furnished this paper (brief statement) to the per

sons mentioned in my letter (subjoined), and to some others. Shortly after, and I think about the same time, I saw in the Army and Navy Journal a statement from Porter that the extract from Jackson's report related to the 30th and not to the 29th August, 1862, and received a letter from General Smith stating the same thing as his opinion from the reports. I at once sent the printed extracts in question to Col. E. Schriver, Inspector General, and at the time acting as confidential secretary to the Secretary of War, with a request that he would verify the extracts as true extracts from the official reports in question for the operations of the 29th August, 1862. My letter is as follows:

"HEADQUARTERS DEPARTMENT OF THE LAKES,
"*Detroit, Michigan, December* 30, 1869.

"MY DEAR GENERAL: I send enclosed a copy of the printed statement of Fitz-John Porter's case which I forwarded to the President, General Sherman, and the Secretary of War, and which you will doubtless receive officially for file. It is not my purpose for the present to publish it, though the time will come when its publication may be necessary, or rather judicious. If there be any answer to it, I confess myself unable to see what it can be.

"The extracts from the official reports of rebel officers I consider (as you will) of no particular value in the case. Indeed they rather weaken than strengthen it, and for this reason, viz, they show an entirely insufficient force in front of Porter 1230 to have resisted his attack, whereas, precisely in proportion to the enemy in the field, precisely in that same proportion was the aid of Porter's corps necessary to the rest of the Army, and his desertion dastardly and inexcusable to the same degree.

"Just in proportion as he proves the enemy to have been in large force in the field he magnifies and intensifies his own crime. His arguments, based on a heavy force of the enemy in his front as an excuse for his retreat, are precisely of the same character as the excuse he also made for retreating (that he believed the rest of the Army was being defeated) before the enemy.

* * * * * * *

"The enclosed statement is for your own use. As I have used the extracts from these rebel reports sent me by you or McDowell without myself ever having seen these reports, I wish you would have them verified as true extracts from the reports of those officers concerning operations of that day, August 29, '62.

"I send you two or three of the printed extracts, upon which I wish you would have the proper certificate made. I only want them for file with my own papers.

"Very truly, your friend,

"JNO. POPE.

"Gen. E. SCHRIVER, U. S. A.

"True copy.

"L. H. PELOUZE,
"*Assistant Adjutant-General.*"

"WASHINGTON, *7th January*, 1870.

"MY DEAR GENERAL: I had the pleasure to receive your note of the 30th ultimo, with your printed statement in the F. J. P. case. I had seen the official copies and read the argument with great satisfaction. I am glad, however, to have the copy you kindly sent for my own use. General Townsend would like a copy also, if you have one to spare.

"I am now able to enclose the printed extracts from the rebel commanders' reports of engagements, certified to by the Adjutant-General, after making a few unimportant corrections. I have reason to believe that there will be no favorable action on F. J. P.'s application for a remission of any part of the sentence of the court in the case.

"In great haste, most truly, yours,

"ED. SCHRIVER.

"Major-General JOHN POPE, *&c., &c.*"

This, then, is my authority for using these extracts, and only that from Jackson's report is in question.

Having, therefore, the certificate of the Adjutant-General to the correctness of these extracts as used, I entertained no doubt of the correctness of all of them. Nevertheless, I suppressed as far as I could, and I believe entirely, the first copies of the "brief statement," and inserted the note at the bottom of the "brief statement" as it now stands:

"NOTE.—Fitz-John Porter asserts that the above extract from Jackson's report refers to the 30th and not the 29th of August, 1862. Printed slips containing these extract

were forwarded to the War Department for verification when the printed statement of which they are a part was finished, and they were returned to the writer certified by the officer in the War Department having charge of the rebel records as true extracts from the original reports of these rebel officers for operations of August 29, 1862. Porter is, therefore, probably deceived. The case against him, however, set forth in the extracts from Stuart's and Longstreet's reports, which are not disputed, is complete."

Having thus called attention in the statement itself to Porter's assertion that the extract from Jackson's report referred to the 30th and not the 29th of August, 1862, and given my authority for using it, and my belief that Porter was mistaken, and an additional statement that the case was complete without considering the extract from Jackson's report, so that it was, and is, practically out of consideration, I supposed, and still suppose, that I did everything demanded by fairness and justice. The "brief statement," with the above note inserted at the bottom of it, was then filed in the War Department, and copies were furnished Colonel Schriver, General Townsend, and others, so that the note at the bottom has been known to them for eight years past, and neither of these officers has ever suggested to me even that there was any mistake about them. The opinion of Colonel Smith and the assertion of General Porter are, therefore, left to be balanced against the certificate of General Townsend and the letter of Colonel Schriver, and whatever the facts may ultimately prove to be, I do not see what I have to do with it.

1231 It is proper to say that the "extracts" in question were sent me in 1867 from Washington, I do not know by whom, but I knew nothing of their being prepared nor who did it, never myself having asked anything of the kind, and being without knowledge that such statements were in existence. I have never seen the reports in question to my knowledge at all, and certainly never have made any examination of them. So far as I am concerned, therefore, in this question, the letters embodied in this paper and the enclosed attested copy of General Townsend's certificate are sufficient.

I am, general, very respectfully, your obedient servant,

JNO. POPE,
Brevet Major General, U. S. A.

The letters of General John Pope and Colonel Ed. Schriver, embodied in this paper, are true copies from the original letters referred to.

C. S. ILSLEY,
Captain 7th Cavalry, A. D. C.

I certify that the foregoing is a true copy of the original letter of General Pope to General Sherman, dated October 23, 1878.

WILL S. VOLKMER,
Aide de Camp.

Mr. CHOATE. I now offer in evidence a letter from Adjutant-General Townsend, relative to his certificate, dated October 8, 1874, which I will read.

The RECORDER. This is something from Adjutant-General Townsend to Col. John Gibbon, certified to by an officer as a true copy. But whatever General Townsend may say to Colonel Gibbon has nothing to do with this case.

Mr. CHOATE. I offer it as an official statement of the Adjutant-General as to the papers on file in his possession.

The RECORDER. Bring him here, then. His communication to General Gibbon has nothing to do with this case.

The PRESIDENT OF THE BOARD. It is not necessary to adhere to those rigid rules, unless the Recorder has reason to doubt the genuineness of that paper. If the paper is not satisfactory in that regard, it can be rendered so by communicating with the Adjutant-General on the subject. It is not necessary to send for the Adjutant-General to testify.

The RECORDER. When I say "send," I use it in the usual sense. We can always by the Adjutant-General's certificate ascertain anything that may be on file in his office. The point I make is, that this is a communication from General Townsend to Colonel Gibbon, which has nothing to do with us.

The PRESIDENT OF THE BOARD. It may or may not, depending upon circumstances.

The RECORDER. If General Townsend is to be concluded by any letter to Colonel Gibbon as to a statement of fact, he ought to be brought here to be examined. They can make him their witness.

The PRESIDENT OF THE BOARD. That is a technical rule, which is unimportant here.

The RECORDER. It is more than technical.

The PRESIDENT OF THE BOARD. If that is not correct, it can be corrected. We have no wish to spend a long time over this point.

The letter was then read, as follows:

WAR DEPARTMENT,
ADJUTANT-GENERAL'S OFFICE,
Washington, October 8th, 1874.

Colonel JOHN GIBBON, *7th Infantry, Fort Shaw, M. T.:*

SIR: In reply to your communication of the 25th ultimo, enclosing a document (herewith returned) furnished you by Gen'l Pope, containing an extract from
1232 Stonewall Jackson's report, and asking whether this document was certified to by me in its present form, I have respectfully to inform you that the document was probably certified to in its present form, but my certificate related to a comparison of the extracts therein quoted with the original reports.

I did not make the caption or notes to the printed document, and gave no certificate relating to them.

Very respectfully, your obedient servant,

E. D. TOWNSEND,
Adjutant-General.

A true copy.

LEVI F. BENNETT,
1st Lieut. and Adjutant 7th Infantry.

The RECORDER. Now that the Board is apprised of the character of the letter, I ask that it be excluded.

The PRESIDENT OF THE BOARD. The paper will be received. If the Recorder has any doubt of the genuineness, he can send to General Townsend.

The RECORDER. I have no doubt of its genuineness.

The PRESIDENT OF THE BOARD. We understand the technical rule. We cannot afford to spend time over this particular matter.

The RECORDER. I have no doubt of the genuineness of the document.

Mr. CHOATE. We now offer two printed letters from General Pope to the Comte De Paris, one dated May 29, 1876, and the other December 21, 1876, which I have no doubt are entirely familiar to the Recorder. [Handed to the Recorder.]

The RECORDER. These do not appear to be even certified as true copies.

Mr. CHOATE. Do you object to their coming in?

The RECORDER. In their present form I do.

Mr. CHOATE. Can you furnish us with certified copies?

The RECORDER. No, sir.

Mr. CHOATE. I do not want the answers at all. I only want the letters of General Pope.

The RECORDER. If you wish to make General Pope your witness, there is the usual rule to be followed.

Mr. CHOATE. Well, I do not care much for them.

The RECORDER. However, I will ascertain whether these were written by General Pope or not; and if they are, he certainly would have no objection to their being known to anybody.

Mr. CHOATE. We do not want to contend with General Pope's objections. If the Recorder has no objection, we will put them in.

The RECORDER. I have objection as they stand now, because they are not properly authenticated.

Mr. CHOATE. They have been extensively circulated and published, and I suppose there is no question about that.

The RECORDER. I don't know anything about it.

The letters were received in evidence and are as follows:

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kansas, May 29, 1876.

To M. LE COMTE DE PARIS:

SIR: Although the general expectation in this country was, I think, that your history of our civil war would have a strong but natural bias in favor of the general on whose staff you served at the beginning of hostilities, and of the personal friends in high official station who surrounded him (an expectation confirmed by those portions of the work which have been published in the United States), yet I confess that I share the surprise of many other people that this natural sympathy, with which I believe no one finds fault, should have led you, no doubt unconsciously, into
1233 errors, contradictions, and inconsistencies which cannot fail greatly to impair the value of the work.

It is to be hoped, indeed I think it may be counted certain, that when the partisans on all sides of the controverted questions raised during the war have had their say, some dispassionate and able writer, in view of the whole subject, will give us as the result a history of our civil war which shall recite the facts as nearly as human testimony can reach the truth.

As your work is ably written, and by a man much respected in this country, it is likely to mislead many persons, to the prejudice of the rights and character of men who were engaged in our great conflict.

I have not enjoyed the advantage of reading all those parts of your history which have been printed in this country. Indeed I have seen nothing concerning the campaign in which I was myself engaged in Virginia except a short extract concerning the second battle of Bull Run published in the Army and Navy Journal of the 27th instant.

Short as this extract is, however, it will afford me, I am sure, sufficient data to illustrate how far your sympathies seem to have carried you in the attempt to reconcile ugly facts, which you felt bound to admit, with a fair record for those in whom you show so manifest an interest, and to do this work at the expense of injustice and wrong to others.

In this extract you say, concerning the second Bull Run battle: "The contest was prolonged after sunset, and amid the darkness of the night could be heard the shouts of the combatants and could be seen the flashes of musketry. Meanwhile Porter had remained the whole of this long day in front of Longstreet's right without firing a musket." And again you say: "However this may be (the reopening of Porter's case), it is now known that the whole Confederate army was united before Porter could have executed the flank movement from which Pope anticipated such wonderful results, and that he had before him Longstreet's entire right wing, part of which only had been engaged against the Federal centre, at the close of the battle. His attack, therefore, could not have produced the results upon which the General-in-Chief had counted. But neither the impossibility of executing to the letter the order of the latter (myself), nor even the instructions McDowell may have given him during the day, afford any excuse for his having remained so long inactive in the presence of the enemy with two fine divisions while a great battle was being fought in the vicinity. In short, if the road was barred against him, if therefore he could not cut the enemy's army in two and secure its defeat, it is equally certain that a vigorous attack made by him upon Longstreet's right would have drawn out all the forces of this general, and, by freeing the rest of the Union line, would have prevented the reverse which the latter sustained at the close of the day."

Let us examine in the light of these statements the charges preferred against Porter, which you seem to find fault with me for having made, instead of confining myself to "blaming" him, which you admit I had a right to do. Under the principal charge against Porter, upon which he was tried, there are three specifications: First, that he disobeyed a positive order to attack the enemy, and "did retreat from advancing forces of the enemy without any attempt to engage them or to aid the troops that were already fighting greatly superior numbers, and were relying on the flank attack he was thus ordered to make to secure a decisive victory," &c., &c. (To avoid making this letter too long I content myself with the substance of the specifications, and enclose them fully drawn out that you may verify my statements.) In the first specification it is also stated that if the flank attack had been made the result would have been to secure a decisive victory and capture the enemy's army.

2d specification: That Porter, "being with his army corps between Manassas Station and the field of battle then pending between the forces of the United States and those of the rebels, and within sound of the guns and in presence of the enemy, and knowing that a severe action was being fought and that the aid of his corps was greatly needed, did fail all day to bring it on the field, and did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle, and without knowing the forces from which he shamefully retreated."

Specification 3d: That Porter, "being with his army corps near the field of battle at Manassas while a severe action was being fought by the troops under Major-General Pope's command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away and fall back with his army to Manassas Junction and leave to the disasters of a presumed defeat the said army, and did fail, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the capital of the country. All this at or near Manassas Station on the 29th of August, 1862."

The only substantial differences I can discover which demand notice between your statements as heretofore quoted and the above specifications are: 1st, your as-
1234 sertion that Porter did not receive my order to attack until dark; and 2d, that the results of an attack made by him would not have led to consequences nearly so great as those expected by me. To the first of these differences, it may be said that no fact can be more clearly established by human testimony than the fact that Porter received this order not later than half past five o'clock in the afternoon. It is not necessary, however, to insist upon this, as you admit (and I think every soldier will agree with you), that Porter's obligations did not depend on the receipt of this order, and that it was as much his duty to go into battle without it as with it.

The second difference I will consider further on, and content myself in this place with saying that as it is a matter of opinion what the result of an attack by Porter would have been, it may fairly be claimed that officers of high rank, known character, and military ability, who were present in that action and fully acquainted with the situation by personal knowledge, are, to say the least, as competent to judge of such a question as yourself, who were not even in the State of Virginia at the time, and I think not more likely than yourself to be influenced by prejudice.

I beg to invite your attention, however, in the first place, to what appears to me a singular conclusion you arrive at. In order that it may be shown that the consequences of an attack by Porter would not have been so great as I expected, you are compelled to assume that the army under my command suffered a reverse on the afternoon of the day of that battle. Without stopping now to reply to the assumption, not only groundless but in positive contradiction to the facts, I will simply ask you to examine again your own statements. You say that if Porter had attacked Longstreet it would have drawn out the whole of that general's force and thereby relieved the rest of the Union line, so that the reverse you assert we met with would have probably been prevented. I say that an attack by him would have given us the victory. I would wish to ask you what distinction you make between a crime which permitted a reverse and a crime which prevented a victory? You yourself charge Porter with the first, but blame me apparently for charging him with the last. Does it really make any difference in the character or degree of Porter's crime whether that crime prevented a victory or permitted a defeat?

Although it is necessary (to sustain your statement that the consequences of Porter's attack would not have been what I expected) that you should assume that we sustained a reverse on that evening, yet it is a fact as well known to every man engaged in the battle on the 29th of August, 1862 (the first day of the second Bull Run), as the fact that a battle was fought at all, that we sustained no reverse on that day, and I shall proceed to prove it by testimony which I think you will not dispute. So far from there having been a "reverse," at nightfall the divisions of Kearney and Reno had driven back the forces in front of them and possessed the ground occupied during the day by the left of the enemy's line. The sharp action by McDowell's corps between sunset and dark, which you graphically describe, was fought opposite to and three-fourths of a mile in front of the line of battle occupied by our centre all day. We not only encamped that night on the ground occupied during the day, but held that and much of the ground which had been occupied by the enemy during the whole of that night and until twelve or one o'clock the next day (the 30th), when *we* and *not* the enemy advanced and renewed the engagement at a point considerably in advance of our line of battle on the 29th. These are facts known to all the army on that field. If any further proof of facts so generally known is needed, it is furnished by the testimony of General McDowell before the court martial which tried Porter, and I presume that neither you nor any one will question McDowell's opportunity nor capacity to judge of such a matter, nor the evidence which he gives. His testimony is as follows:

"Q. Please state the ground on which you formed the opinion that if the accused

had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor.—A. Because on the evening of that day (29th of August) I thought the result was decidedly in our favor, as it was. But admitting that it was merely equally balanced, I think and thought that if the corps of General Porter, reported one of the best, if not the best, in the service, consisting of between twenty and thirty regiments and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly.

"Q. (By ACCUSED.) Will you state what in your opinion would have been the result of the battle of the 29th of August if the accused had attempted to execute the order of 4.30 p. m. to attack the enemy on his right flank and in the rear, if he, the accused, had been defeated?—A. To have defeated General Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and I think would have still resulted in a success to our side—to our army generally.

"Q. (By ACCUSED.) Then are we to understand you as saying that a failure of the attack contemplated by the order of 4.30 p. m., had it been made, would not have materially affected the fate of the day?—A. I have stated that even if the 'attack
1235 had been made and failed, it could only have failed by a very large force of the enemy attacking it, and that would have so much relieved the front as to have gained a success for the army generally.'"

This is General McDowell's testimony, and that he understood the situation thoroughly cannot be disputed. It settles completely the very serious error you have committed in stating that our army sustained a reverse on the evening of that day, the 29th of August, 1862, and using that error to support the theory that Porter's attack would not have led to the result I expected. Concerning this theory we have in the testimony of General McDowell the opinion of an expert of high character and station, of admitted military acquirement and skill, and it is an opinion given with knowledge of the facts. I respectfully submit to you that such an opinion, based on such statements, and by such an authority, demands more consideration than it has received at your hands, and is, I venture to say, weightier authority than was or is in your possession for making an assertion in absolute contradiction to it.

One more quotation from the brief extract from your history published in the Army and Navy Journal, and above referred to, will, I think, suffice for the purpose I have in view at present.

You say: "This indifference on the part of Porter to the cannon's appeal, the manner in which he interpreted the orders of superiors, and the tardiness with which these orders reached him, were the inevitable consequences of the confusion we have referred to in the general management of the army."

I think I have never seen a more singular statement, viewed either from a logical, a moral, or a military standpoint. Is it indeed true that "confusion in the general management of an army" has for an "inevitable consequence" the commission of a monstrous military crime, by an officer among the highest in rank and command? Surely no such idea would be maintained in any army in the world, and I am very sure it is not upheld by you. What! Because in the opinion of a subordinate officer in high command there is confusion at the Army headquarters, is it therefore an "inevitable consequence" that he shall commit the most monstrous of military crimes? No such "inevitable consequence" would be admitted by any soldier worthy of the name. He serves his country and is faithful to his comrades at all times, but more especially and in a far higher sense ought he so to do and be if he has reason to think that both army and country are in danger from "confusion in the general management of the army."

In making the plea in excuse for a great criminal that the enormous military crime he committed was "the inevitable consequence" of presumed "confusion in the general management of the army," you cannot now fail, it appears to me, to comprehend the sorry position, both in a moral and a military sense, to which your sympathies have led you.

"The confusion in the general management of the army" which you appear to consider, in some sort, an excuse for Porter, had no more existence than the "reverse" on the 29th August, which you ascribe to us, but no doubt the "confusion" rests on the same authority as the "reverse." It is contradicted by the records as completely as McDowell's evidence establishes the misstatement about the reverse to our arms. Scarcely any order, and certainly none of importance, was issued by me in that campaign except in writing, and all the orders contained not only the most detailed instructions (very unusually detailed in campaign), but in most cases the exact hour and place of issue. These orders are on file in the War Department, and accessible to you or any other responsible person, and the most important of them have been printed and published by Congress. I ask no other proof of the utter groundlessness of your assertion of a "confusion" than these furnish, and I commend them to an attention which it does not appear you ever gave them, even if you took the trouble to examine them.

If it indeed be true, as you state, that the "inevitable consequence" of "confusion in the general management of an army" is the commission of the most monstrous crime known to military law, it is to be regretted that you did not also state a second "inevitable consequence" sure to have followed in your own or any other civilized country in the world except this, viz, the swift execution of the criminal.

It would not be difficult, I think, to overturn several other statements you make in the short extract published in the Army and Navy Journal, particularly the statement that the whole Confederate army was united before Porter could have made the attack in his front (no flank movement was needed or ordered). I am sure you did not intend, by using the term "flank movement," to mislead the reader. A "flank movement" in the presence of the enemy requires time, and in general a good deal of time, and is attended by serious risk. Porter's attack would have been on the *enemy's* flank, but directly on Porter's own front. Your use of the term "flank movement" is an error, and implies what is not true, and therefore not intended by you.

This incomplete review of a short extract from your history of our civil war (an extract containing statements which are, I trust, exceptionally erroneous) will, I hope, be sufficient for my present purpose, which is to caution the reading public in this country, as far as I can do so by the publication of this letter, not to accept
1236 without grave doubts your account of any transactions related in that history except such as fell under your own observation.

Your manifest perplexity in trying to account for many of the occurrences which took place whilst I was in Virginia (and you were absent, it may be stated, from this country) is not surprising in the face of the extraordinary malevolence, personal bitterness, defamation of character, and absolute disaster resulting therefrom during that time on the part of men all of whom proclaimed a common purpose, and that purpose the protection of their government.

But I think your difficulty arises from a failure to give due consideration to the state of feeling and opinion among men in high place which prevailed at that time. It was a time when many reputedly wise persons were hoping every day to patch up a hollow peace without more fighting; when the military hero whose apotheosis you seem disposed to herald was proclaiming from the field of a lost battle the enormity of negro emancipation, and when the President of the United States himself hardly dared to utter the idea aloud from what is known to have been an unfounded fear of public disapproval. At such a time and under such circumstances zeal and earnestness in a vigorous prosecution of the war shocked so many prejudices and jeoparded so many hopes, now known to have been baseless, that they constituted a sin meriting condign punishment, and, if I may be considered a competent judge, the punishment was duly inflicted.

In short, at an inopportune time I forgot a maxim of one of the shrewdest of Frenchmen, "*Surtout point de zèle*," and it seems logically in order that another eminent Frenchman should belabor me because of the results.

I am, very respectfully, your obedient servant,

JNO. POPE,
Brevet Major-General, U. S. Army.

A true copy.

C. S. ILSLEY,
Capt. & A. D. C.

HEADQUARTERS DEPARTMENT OF THE MISSOURI,
Fort Leavenworth, Kas., December 21st, 1876.

M. LE COMTE DE PARIS:

SIR: Events of great consequence have for the past three months so absorbed the attention of every one in this country that it has been almost impossible to think of anything else, and I trust that you will consider this as my excuse for not sooner acknowledging your letter of October 8th, 1876.

That letter, I presume, is in some sense a reply to mine of May 29th, 1876, though I may be permitted to say that it cannot be considered an answer to the objections I have felt constrained to make to certain portions of your history of our civil war. In it you discuss many points which I did not raise, and answer many questions which you yourself put, but it does not seem to me that you explain satisfactorily, if at all, the errors to which I called your attention. I pointed out to you several errors of very grave character in your history, and gave you my authority for the statements I made in contradiction to them, which I shall here briefly recapitulate:

1st. You state in your history that the army under my command suffered a reverse on the evening of the 29th August, 1862 (the first day of the second battle of Bull Run). The answer to this statement I will leave General McDowell to make, merely premising his testimony by saying that he was second in command in that army; that

he was personally with me hours before and after the time indicated, and was thoroughly acquainted with the condition of affairs in all respects. Your abrupt disposal of his testimony on the ground that he did not know of Longstreet's presence in front of Porter is not at all justified by the facts, as it will be seen from McDowell's testimony, quoted below, that it covers the very point that there might probably have been at the time in front of Porter a force large enough to have defeated him in open battle if he had attacked. Whether his opinion is weightier than your own on such a subject, especially in the view that his was sworn testimony before a court of what he knew, and yours an opinion formed at a distance, and without such solemn responsibility, I am quite willing to leave intelligent public opinion to decide.

Being a witness before a court-martial, General McDowell, in reply to a question, said: "On the evening of that day (29th August, 1862), I thought the result was decidedly in our favor, as it was." In addition to this testimony of General McDowell, I may say that your statement of a reverse to our arms at that time or any other time during the 29th of August, 1862, was the first intimation of such a thing I ever heard from any quarter, and certainly there was no man on that field who had such an idea at any time during that day, if we except General F. J. Porter, who was not on the field at all, but at a distance of four or five miles away was finding excuses to fall back, and judged from sound and not from sight; which I may here remark is hardly con-
1237 sistent with your theory, which I will notice further on, that Porter's Corps did not know that a severe action was going on with the rest of the army.

2d. Using your theory of this "reverse" as a basis, you proceed to say that whilst an attack by Porter would have probably prevented this "reverse," it could not have produced the results I expected from it.

If, however, as is the fact, there was no reverse but a success elsewhere, it will be necessary for you to reconsider your opinion of what the result of his attack would have been, and to assist you in doing so I give again the testimony of General McDowell before the court-martial on this very point. Being asked: "Please state the ground on which you formed the opinion that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor?" he replied, "Because on the evening of that day (the 29th August) I thought the result was decidedly in our favor, as it was; but admitting that it was merely equally balanced, I think, and thought, that if the corps of General Porter, reported one of the best, if not the best, in the service, consisting of between twenty and thirty regiments and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly."

In reply to the question by the accused, "Will you state what in your opinion would have been the result of the battle of the 29th of August if the accused had attempted to execute the order of 4.30 p. m. to attack the enemy on his right flank and in the rear, if he, the accused, had been defeated?" General McDowell said: "To have defeated General Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and I think would have still resulted in a success to our side; to our army generally." This answer effectually dosposes of your dismissal of McDowell's opinion because he did not consider the contingency of Longstreet's presence.

And again being asked, "What would probably have been the effect upon the fortunes of that battle, if between five and six o'clock in the afternoon General Porter, with his whole force, had thrown himself upon the right wing of the enemy, as directed in this order of 4.30 p. m. of the 29th August, which has been read to you?" he replied, "I think it would have been decisive in our favor."

Again I say that I am perfectly willing to submit to an intelligent public opinion whether the testimony of General McDowell, based on his own full personal knowledge and observation of the facts, is, or is not, weightier than yours, based on an erroneous assumption and supported by mistaken theories.

3d. You make an excuse for Porter, and of course to the injury of the rest of the army, and especially its commander, that, although he did not go into battle at all (for which inaction you yourself say that he had no excuse), he nevertheless, by his mere presence, held Longstreet in check, and thereby prevented him from falling upon the rest of the army.

Now, if the object of two armies, engaged in campaign, be only to keep each other in "check," war would be stripped of all its horrors and become an out-of-door exercise, very exciting, and no doubt healthful. Unfortunately, however, the world generally does not hold this theory of the business of armies engaged in battle, and even if it did, Porter did not play his part in this exercise. I leave General Longstreet himself to say how he was held in "check," and I suppose his statement, like that of General McDowell, is entitled to at least equal weight with yours on that point.

In his official report, dated Winchester, Va., October 10, 1862, he says: "At a late hour in the day Major-General Stuart reported the approach of the enemy in heavy columns against my extreme right. I withdrew Wilcox with his three brigades from the left, and placed his command in position to support Jones in case of an attack on

my right. After some few shots the enemy withdrew his forces, moving them round toward his front, and about four o'clock in the afternoon began to pass forward against General Jackson's position. Wilcox's brigades were moved back to their former position" (that is Longstreet's left, which was probably opposite our left-center), "and Hood's two brigades, supported by Evans, were quickly pressed forward to the attack," &c.

It is quite unnecessary to say that Porter's corps was not the force which "pressed forward against General Jackson." How far Longstreet was held in "check"—admitting that to "check" each other is the business of armies engaged in battle—he himself tells in the foregoing extract from his report, and it is, I think, sufficient.

4th. I think your statement that the country between Bull Run and Gainesville was difficult and well-nigh impracticable will astonish, if it does not amuse, those who are familiar with that small district. It is rendered more absurd by the fact that the right wing of the enemy the very next day, and greatly to our cost, moved against our left over the very ground in front of Porter the day before, and certainly without any perceptible difficulty whatever. That this ground could be moved over by an army corps rapidly and effectively the enemy completely demonstrated the very day after Porter found it so impracticable.

5th. You intimate, rather than absolutely state, that from the position Porter's
1238 corps occupied the sound of the battle, except perhaps the artillery, could not be heard, and inferentially that Porter's command, himself included, could not know of the severe action going on. That a severe battle, the sounds of which were heard in the streets of Washington, thirty miles away, could not be heard at four miles' distance by Porter's corps is certainly a singular idea, and one hard to substantiate by any witness in that corps.

I will, however, let Porter answer for himself, as he does in this extract from a letter written at the time and addressed to McDowell and King, in which he not only contradicts the assumption that he did not know of the battle, but actually judges from its sounds that the army to his right was falling back, being defeated, and the enemy advancing; and this opinion of the battle and its results he assigns as his reason for deserting the field.

The following extract from his letter covers the point in question:

"Generals McDowell and King: I found it impossible to communicate by crossing the roads to Groveton. The enemy is in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas," &c., &c.

This extract may, I think, be considered conclusive of what Porter knew and believed, and it also, I think, pretty effectually disposes of the "checking operation."

In your letter you divide up the time occupied in these military operations into several periods, and undertake to treat them separately. As for instance, you include a period from early morning of the 29th of August, 1862, to about twelve o'clock in the day, when Porter, as you state, was with McDowell, his senior, and therefore under that senior's command, who thereby was responsible for what Porter did or did not do.

If this be so your case is made even worse. In his testimony before the court General McDowell says that when he left Porter, with the enemy in sight of him, to move up the Sudley Springs road to join the left of the army, he said to Porter: "You put your force in here, and I will take mine up the Sudley Springs road on the left of the troops engaged at that point with the enemy." "I left General Porter with the belief and understanding that he would put his force in at that point."

If, then, as you affirm, Porter were under McDowell's command at that time, he received precisely the orders from McDowell which I sent him four hours later, neither of which orders did he make any effort to obey.

You seem also to fancy that if you can establish the fact that there was a large force of the enemy in front of Porter, and that his attack might have been repulsed, you have furnished him some justification for his offense. This seems to me a wholly untenable position either for a soldier or a man of ordinary fidelity or humanity.

A severe battle was going on, in which all the forces of our army (except Porter's) were engaged; in which the most earnest efforts of every man were needed, both for the army and the country.

The greater the force of the enemy in our front, the greater need there was of the help of Porter's corps, and the greater his obligation to render it; and if you could prove that the whole Southern Confederacy was in front of him on that day, you would only succeed in blackening his crime; the crime of deserting the field of battle and abandoning his comrads to the unequal odds he left behind him.

In his letter to McDowell and King, above quoted, Porter states his purpose to withdraw to Manassas, three miles to the left and rear, because he thought the rest of the army was being defeated, and the reports both of Longstreet (above quoted) and of Stuart, who were in front of him, positively state that he did retire from their front,

and that, in consequence, Longstreet did precisely what he was expected to do and ought to have done, viz: withdrew the forces sent to resist Porter's advance, and threw them on the rest of the army elsewhere engaged in battle.

It seems to me unnecessary to pursue this matter farther in this way. A history of the campaign in Virginia in which I was concerned is being written by competent hands, and will, I trust, soon be published. In that history all of the controverted points will be treated dispassionately and without prejudice I know, and I hope with more complete knowledge of the facts than you seem to possess. Until then I am content to let the matter rest.

My only object in writing to you at all I frankly told you, viz: "To caution the reading public in this country as far as I can do so by the publication of this letter" (my letter of May 29, 1876), "not to accept, without grave doubt, your account of any transactions related in your history except such as fell under your own observation." It is rendered doubtful to me whether this exception was not a mistake; but however that may be, I am so certain that whatever my letter might lack to produce
the effect I wished has been supplied by yours, that I feel grateful to you for
1239 writing it, and shall take pains to give it all the circulation possible in connection with my own.

The moral precepts with which you so obligingly favor me seem to me truly admirable, but they would have carried additional weight had you illustrated them in the composition of your history of "The Civil War in America."

I am, sir, very respectfully, your obedient servant,

JNO. POPE,
Brevet Major-General, U. S. A., Commanding.

Mr. CHOATE. I will offer now what I supposed was in already, that is, General Pope's official report to the Secretary of War, with the accompanying documents, certified by Adjutant-General Townsend as compared and found correct. Very large portions of it have been already introduced by the Recorder, and will be found printed in his opening argument or as an appendix to it. We offer the whole of the document for what may be found in it. It includes the sub-reports which were made to him.

The RECORDER. Covering the entire campaign from June 26, 1862, up to the time that he finally left the Army of Virginia; a book of 256 printed pages is what they now desire to offer. I shall object to this being put in in this shape.

Mr. MALTBY. In response to the Recorder, I will say that he has been furnished with a copy of the extracts, or with indications showing where the extracts are to be found which we propose using in the argument; and he has been furnished with a copy of my argument, which deals largely with it. We would not want, of course, to have that report printed in full; but these extracts which I have caused to be copied we would like to have printed upon the record. There are some dispatches there very material to General Porter's case.

Mr. CHOATE. The stenographer will note that it is offered with the accompanying reports, dispatches, and orders included in the volume.

The PRESIDENT OF THE BOARD. It is covered by the former ruling of the Board, as it is understood, unless the Recorder has something to suggest differently.

The RECORDER. Then, as I understand the ruling of the Board, it is that this entire document, as furnished to Congress, covering the entire operations of the Army of Virginia, with all the reports attached, is to be printed as a part of the record.

The PRESIDENT OF THE BOARD. Not at all. That whole ground was covered by the former ruling, in which it was decided that it was not to be printed; that the official document was to be received, counsel were to point out to the Recorder what portion of that official document they relied upon as evidence in this case, and that portion only was to be printed or regarded as part of this record.

The RECORDER. That is the way I understood it.

Mr. MALTBY. That is what we offered.

The RECORDER. I have not received back from the Adjutant-General the certificate as to those parts of this report and accompanying reports that I used in my opening statement on the 2d of October, and which I desired to put in as from the files of the War Department; but as the other side have offered it under the statement of the Adjutant-General (which I have not got), of course it will be unnecessary for me now to get his certificate.

Mr. CHOATE. We want to make use, upon the argument, of the original map which was used upon the court-martial, and as extracted from the box sent here by the War Department, and we have prepared several maps which embody the positions, as we understand them, to be
1240 established by the evidence at the various hours to which they refer, one showing the positions at 12 o'clock m. and again at 6 o'clock p. m. of August 29, and another showing the positions at 12 o'clock noon on the 30th of August. Of course these are not in the nature of evidence, but of argument. We shall present them to the Board, and they are at the service of the learned Recorder.

Mr. MALTBY. I presume they will be attached to the argument as a part of the argument as to the location.

The RECORDER. In looking at the document offered by the counsel, entitled "Correspondence between General Pope and the Comte de Paris, concerning the second battle of Bull Run, 1876," only a part of the letters is authenticated by any signature that I am familiar with. However, as the counsel (Mr. Choate) assumes the responsibility of the authenticity of these documents, namely, this very correspondence that I speak of, although I objected and still continue to object to the admission on the ground I originally stated, yet I will not deny the authenticity of them under these circumstances.

The PRESIDENT OF THE BOARD. The papers can be received, then, under the general ruling.

1241 ARGUMENT OF ANSON MALTBY, COUNSEL FOR THE PETITIONER.

MR. PRESIDENT AND GENTLEMEN: It is a matter of congratulation to us all that after this inquest has dragged its slow length along since the 20th of last June, after one hundred and forty-two witnesses have been examined, of whom, I may be permitted to say, we have introduced not more than forty-three, and after thirty-seven sessions, we are now near the period when our labors shall be at end.

We thank you for the patience with which you have heard the evidence and the arguments, for the close attention and interest you have shown during this prolonged investigation.

I do not deem it necessary strictly to follow in this argument the precise order of events, beginning at Harrison's Landing August 14, 1862, as I did in my opening address, for the period elapsing prior to August 27 will be treated, if at all, toward the close of my speech. Nor shall I trespass upon the courtesy of the Board by a compilation of evidence on points where no dispute is raised. In such cases I shall simply state the facts without giving the words of the witnesses.

ARRIVAL AT WARRENTON JUNCTION.

On the 27th day of August, 1862, at between ten and eleven o'clock in the forenoon, Maj. Gen. Fitz-John Porter arrived at Warrenton Junc-

tion, and reported in person to Maj. Gen. John Pope, commanding the Army of Virginia.

General Porter's corps consisted of two divisions, General Morell's division of three brigades, the first, second, and third, commanded, respectively, by Colonel Roberts, General Butterfield, and General Griffin; and General Sykes' division of three brigades, commanded by Colonels Buchanan, Chapman, and Warren.

There has been much dispute as to the number of troops under Porter's command at that moment. Returns to show what the number was have been introduced this morning. I have not examined them with sufficient scrutiny to state what the number was, but it was about 8,500 to 9,000 men, excluding Piatt's brigade.

General Pope says General Porter reported to him at that time that he had between 8,500 and 9,000 men (C. R., p. 15).*

That report of General Porter to General Pope is the only evidence that has been introduced as to Porter's knowledge of the number of men under him, and by that admission of General Pope of General Porter's report to him alone must General Porter be bound. No other knowledge has been brought home to him. There was no motive for him to conceal the number of men under him; therefore, it is fair to conclude that he had, so far as he knew, only so many men as are named in that statement.

It is singular that the government should have fallen into the error of supposing that there were 3,000 troops in Piatt's brigade under General Porter at any time whatsoever. The remnant of Piatt's bri-
1242 gade that was placed under his command is described in a dispatch that was produced by the government, signed by General Porter, and addressed to General Burnside. That dispatch is marked No. 20, and I will read it.

To General Porter's Fifth Corps General Pope added two regiments, commanded by General Piatt (C. R., p. 15), over whom was General Sturgis, of whom General Porter speaks thus in dispatch No. 20 of this statement: "Sturgis is here with two regiments; four were cut off by the raid" (near Cedar Run). These two regiments numbered 824 men by the official return introduced in this investigation. Thus General Porter had something like 10,000 men.

General Pope received General Porter at the telegraph station with coolness, according to the testimony of Colonel Ruggles, chief of General Pope's staff, on this inquest. His account of the interview leads us to judge that the reception of General Porter was with some coolness.

There the two generals had a conference, and what General Porter learned from General Pope is embodied in the following dispatch. It will be noticed that this dispatch, No. 20, is a reiteration of the statements of a great many dispatches by General Pope and his officers, which I shall use in my argument, and which are incorporated in the volume entitled "General Pope's official report and supporting documents, furnished by the honorable Secretary of War, and published by resolution of the House of Representatives March 3, 1863," showing how accurate was his knowledge as to the information received by General Pope.

[No. 20.]

(*From Warrenton Junction, August* 29, 1862—4 *p. m.*)

GENERAL BURNSIDE, *Falmouth, Virginia:*

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was

* C. R., Court-martial Record; B. R., Board Record.

propelling them. I can see no cause of alarm, though this may cause it. McDowell is moving to Gainesville, where Sigel now is. The latter got to Buckland bridge in time to put out the fire and kick the enemy, who is pursuing his route unmolested to the Shenandoah or Loudoun County. The forces are Longstreet's, A. P. Hill's, Jackson's, Whiting's, Ewell's, and Anderson's (late Huger's) divisions.

Longstreet is said by a deserter to be very strong. They have much artillery and long wagon trains. The raid on the railroad was near to Cedar Run, and made by a regiment of infantry, two squadrons of cavalry, and a section of artillery. The place was guarded by nearly three regiments of infantry and some cavalry. They routed the guard, captured a train and many men, destroyed the bridge, and retired leisurely down the roads toward Manassas. It can be easily repaired. No troops are coming up except new troops, that I can hear of. Sturgis is here with two regiments; four were cut off by the raid. The positions of the troops are given in this order. No enemy in our original front. A letter of General Lee, seized when Stuart's aide-de-camp was seized, directs Stuart to leave a squadron only to watch in front of Hanover Junction, &c. Everything has moved up north. I found a vast difference between these troops and ours, but I suppose they were new, as to-day they burned their clothes, &c., when there was not the least cause. I hear that they are much demoralized, and needed some good troops to give them heart and, I think, head. We are working now to get behind Bull Run, and I presume will be there in a few days if strategy don't use us up. The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances. I would like also to be ordered to return to Fredericksburg, to push toward Hanover, or, with a larger force, to push toward Orange Court-House.

General Porter has recommended what it seems was a very wise course indeed; to strike upon the rear of the advancing column of the enemy, in order to make them retreat, instead of allowing them to strike in the rear of the Union forces.

I read these extracts because they bear more especially upon
1243 General Porter's idea that battles were not to take place until they had retired behind Bull Run and been re-enforced by the Army of the Potomac coming up from Alexandria, unless the exigency of the moment should require an attack or an advance.

I wish Sumner was at Washington, and up near the Monocacy, with good batteries. I do not doubt the enemy have a large amount of supplies provided for them, and I believe they have a contempt for the Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions. I was informed to-day by the best authority* that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take care of itself. Pope says he long since wanted to go behind the Occoquan. I am in great need of ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of my corps are in houses on the road —very sick, I think. There is no fear of an enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's Fords much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain to-night, please do so, direct to this place. There is no grain here or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough. Most of this is private, but if you can get me away, please do so. Make what use of this you choose, so it does good.

Don't let the alarm here disturb you. If you had a good force you could go to Richmond. A force should at once be pushed on to Manassas to open the road. Our provisions are very short.

F. J. PORTER.

After telegraphing, this dispatch will be sent to General Burnside.

Then follows this general order:

[General Orders No. —.]

HEADQUARTERS ARMY OF VIRGINIA,
Warrenton Junction, August 27, 1862.

The following movement of troops will be made, viz:

Major-Gen. McDowell with his own and Sigel's corps, and the division of Brig. Gen. Reynolds, will pursue the turnpike from Warrenton to Gainesville, if possible, to-night.

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*General Pope.

The Army corps of Gen. Heintzelman, with the detachment of the ninth corps under Maj.-Gen. Reno leading, will take the road from Catlett's Station to Greenwich, so as to reach there to-night or early in the morning. Maj.-Gen. Reno will immediately communicate with Maj.-Gen. McDowell, and his command as well as that of Maj.-Gen. Heintzelman will support Maj.-Gen. McDowell in any operations against the enemy.

Maj.-Gen. Fitz John Porter will remain at Warrenton Junction till he is relieved by Maj-Gen. Banks, when he will immediately push forward with his corps in the direction of Greenwich and Gainesville, to assist the operations on the right wing.

Maj.-Gen. Banks, as soon as he arrives at Warrenton Junction, will assume the charge of the trains, and cover their movement toward Manassas Junction. The train of his own corps, under escort of two regiments of infantry and a battery of artillery, will pursue the road south of the railroad, which conducts into the rear of Manassas Junction. As soon as the trains have passed Warrenton Junction he will take post behind Cedar Run, covering the fords and bridges of that stream, and holding the position as long as possible. He will cause all the railroad trains to be loaded with the public and private stores now here, and run them back towards Manassas Junction, as far as the railroad is practicable. Wherever a bridge is burned so as to impede the further passage of the railroad trains, he will assemble them all as near together as possible and protect them with his command until the bridges are rebuilt. If the enemy is too strong before him before the bridges can be repaired, he will be careful to destroy entirely the train, locomotives, and stores, before he falls back in the direction of Manassas Junction. He is, however, to understand that he is to defend his position as long as possible, keeping himself in constant communication with Major-General Porter on his right. If any sick, now in hospital at Warrenton Junction, are not provided for and able to be transported, he will have them loaded into the wagon train of his own corps (even if this should necessitate the destruction of much baggage and regimental property) and carried to Manassas Junction. The very important duty devolved upon Major-Gen. Banks, the Major-General commanding the Army of Virginia feels assured that he will discharge with intelligence, courage, and fidelity.

1244 The General Headquarters will be with the corps of Gen. Heintzelman until further notice.

By command of Major-Gen. Pope.

GEO. D. RUGGLES,
Colonel and Chief of Staff.

I shall not at present refer to the language used by General Porter in the foregoing, which has been the occasion of harsh comment on the part of the Judge-Advocate-General.

General Pope left Manassas late in the afternoon. Although he says he left at noon, yet the preponderance of evidence is that it was much later, a dispatch of General Pope being dated at Warrenton Junction even as late as five o'clock that day—

WARRENTON JUNCTION, *August* 27, 1862—5 p. m.

I am just leaving for Bristow Station. * * * * *

JOHN POPE.

Major-General MCDOWELL.

General Sykes's troops got into Warrenton Junction, part of them, between twelve and one o'clock (Sykes, B. R. 445), having marched twelve or fourteen miles. (C. R. 176.)

General Morell says he got there the middle of the afternoon, he thinks. His command, the last of it, did not get there until near sunset. (C. R., p. 143.)

"Two brigades had marched from Kelly's Ford on the Rappahannock, and one had marched from Barnett's Ford"; Kelly's Ford being about 17 miles and Barnett's Ford 19 or 20 miles away.

Now, the only testimony which contradicts this is that of General Roberts, who, on the court-martial trial, testified that some troops of General Porter he saw between nine and ten in the morning, and that he saw General Morell about noon, and understood that General Morell had arrived with the rear division (contradicting Morell's own evidence

as to the time of his arrival); that he had a long talk with General Morell between twelve and one.

And of General Pope (C. R. 12), who says General Porter and a portion of his troops arrived between seven and ten in the morning (I suppose the 7 is a misprint for 9). Here I shall have resort to documentary evidence to show how great a mistake this was. General Porter's dispatch No. 17 of his statement directed to General Burnside is dated Bealeton, 9 a. m., and Bealeton is distant six miles from Warrenton Junction by the railroad, so that General Sykes's troops could not have got to Warrenton Junction with General Porter between nine and ten o'clock. General Porter states that he got there between ten and eleven, and his statement must be correct. General Porter also states that he received this order of General Pope's to move to Warrenton Junction at 9 a. m., while with Sykes's troops on the march for another point.* This is uncontradicted.

As to General Roberts seeing General Morell, and understanding that he had brought up his troops at noon, the evidence was so strong against him that even the Judge-Advocate-General had to admit the hours of arrival of General Morell's brigades to be substantially as we contend.† And Lieutenant Davis testified from his diary to the arrival of Colonel Roberts's brigade as being at half past four. Earle, A. A. G. to General Morell, said he got there at five.

Their (General Pope's and General Roberts's) evidence being
1245 bad as to the arrival of one party, General Porter and General Sykes, why not as to the other?

If General Pope testified from recollection as to the hour with reference to the time that he left Warrenton Junction, he was mistaken as to that time, because, instead of leaving at twelve, he really left much later. Another telegram of his to General McDowell is dated Warrenton Junction, August 27, 1862, 1.45 p. m.

It is to be noted that General Roberts also fell into an error about the hour of General Pope's departure "being a little after noon, nearer one o'clock than twelve o'clock, perhaps." (C. R., p. 47.)

Colonel Smith says General Pope left for Bristoe at half-past four. (B. R., 339.)

Now, if these two generals are wrong as to one hour of the day, they cannot be very good witnesses as to another hour, which it does not appear they recollect except from the sequence of events.

With this introduction I propose to deduce from the facts proven before you that

GENERAL PORTER WAS NOT GUILTY OF DISOBEYING THE ORDER OF 6.30 P. M. AUGUST 27, 1862.

We will now consider the first order which General Porter is charged with disobeying.

It furnishes the ground of the first specification of the first charge, and on that specification he was found guilty. It is as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—6.30 p. m.

GENERAL: The Major-General commanding directs that you start at one o'clock to-night, and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action

* General Pope's order of August 27, 4 a. m., countermanded his order of August 26, 7 p. m.

† P. 303, C. R.

with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward immediately. Also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope.

GEGRGE D. RUGGLES,
Colonel and Chief of Staff.

Major-General F. J. PORTER,
Warrenton Junction.

P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery——

In other words, he was carrying all the artillery, except two pieces, with him.

as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the junction, instruct Colonel Cleary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

The same condition; and, also, nothing said as to the time when Colonel Cleary is to run back the trains. The inference to be drawn is that it is to be done immediately; and it was done, commencing at 10.30 p. m. and ending at 4 a. m.

By command of Major-General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

1246 Taken apart from General Porter's dispatches, and from his actions on the 29th of August, which I will treat of hereafter, there is nothing whatever in the charge, to wit, that he delayed two hours in his march. Instead of marching at one, he gave orders to march at three o'clock in the morning, or as soon thereafter as was practicable. I characterize this as a mere make-weight of accusation on the part of the enemies of General Porter, in order that his conviction might be more weighty.

Such delays in marching could not have been of infrequent occurrence during the war.

Examples may be found in this very campaign.

Now, notwithstanding General Pope's endeavor to make this order carry with it the knowledge of General Hooker's lack of ammunition, it does not do it. Not one word is said about it. General Pope acknowledges (C. R., p. 12) that he learned of General Hooker's lack of ammunition "just at dark," which was some time after this order was written and sent.

There is no evidence anywhere that this knowledge was conveyed to General Porter at that time. Captain DeKay does not say that he made any intimation of the sort when he carried that order to Porter. General Morell says he did not hear anything of it; did not remember anything of it. So says General Warren in this investigation. In his report of January 27, 1863, General Pope says:

At dark on the 27th, Gen. Hooker reported to me that his ammunition was nearly exhausted. * * * Thinking it altogether likely that Jackson would mass his whole force and attempt to turn our right at Bristoe——

Now, take notice, he says nothing of that kind. The sole purpose expressed in that order is that General Porter should come forward with

his whole corps; that the enemy is being driven back; is retiring along the railroad, and we must clear the country. Nothing said about attack.

and knowing that Hooker, for want of ammunition, was in little condition to make long resistance, I sent back orders to General Porter, about dark of the 27th, to move forward at one o'clock in the night. * * *

Well, as 6.30 is some time before "at dark," do you not think that General Pope had better have been certain of his facts before piling Pelion upon Ossa in that way, by attempting to make it appear that General Porter would have been responsible for the defeat of Pope's army if Jackson had fallen upon him that night, and attempting to crush General Porter with a charge of possessing knowledge he could not possess? This is not the only instance where General Pope has been careless of facts when other shoulders than his own have to bear blame.

Indeed, we find that as late as 6.5 a. m., 28th, General Pope sends General Porter intelligence of the fact of General Hooker's lack of ammunition. As far as we know, it was the first intelligence that General Porter received. Instead of saying *received*, I should say *sent;* there is no evidence that General Porter received it. We simply found it in a pamphlet published by General Roberts, one of General Pope's aides.

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, Aug. 28th, 1862—6.5 a. m.

Maj. Gen. F. J. PORTER, *Commanding 5th Corps:*

GENERAL: Major-General Pope directs me to say that General Hooker reports his ammunition exhausted. Gen. Pope desires, therefore, that you come forward with your command at once with all possible speed, and that you send back to hurry up your ammunition-train.

I am, general, your obedient servant, very respectfully,
GEORGE D. RUGGLES,
Col. & Chief of Staff.

1247 If he had sent this intelligence before, why should he do it again? He had heard from Porter by his own confession before that.

It is to be observed that he could not have been much impressed with concern about lack of ammunition; for when the night became darker, at nine o'clock, he wrote orders to Reno, Kearney, and McDowell, in not one of which does he mention the lack of ammunition; nor does he ask Kearney and Reno, who are at Greenwich, not more than four or five miles away by the map—for it has not been surveyed for this Board—to come forward at one o'clock, but at dawn!

Judge-Advocate-General Holt rings out a wild alarum that it was not Porter's fault if Hooker was not pounced upon and annihilated; but Pope did not fear this, or he would have ordered up Reno and Kearney at once; and the order to General Porter showed that he was wishing, not to resist, but to attack!

General Pope was ten miles away. The order had been written before the character of the night could have been known. General Pope had seemed, in that campaign, mistaken as to (or regardless of) distances, as General McDowell says, p. 57, of his statement before his court of inquiry.

The order was that he should come forward with his "whole corps, or such part as is with you." Even General Morell, with his tired troops, was to be sent for if he was not up, so that General Porter's corps would have to march, part of it twenty-four miles and part of it thirty miles in twenty-four hours, including a night march of ten miles through intense darkness, over a road now full of stumps, now winding about, crossing

and recrossing a railroad over which, from 10½ p. m. to 4 a. m., railroad trains were running to and fro in obedience to General Pope's order, and blocked by a pell-mell mass of wagons stuck fast or quietly resting in the roads, their horses unhitched, their teamsters unruly, some of them declaring that they had not seen a wagon-master for a week; and yet these troops must arrive in condition to pursue the enemy and drive him from the country!

Lieutenant Davis testified (page 390, Board Record) as follows:

Q. Do you recollect whether there were any obstructions in the way of marching from Warrenton Junction to Bristoe Station?—A. I recollect distinctly there were.

Q. What character?—A. Pope's wagon-train; the road was entirely blocked; and between two of those stations the wagon-train passed through our column, and I individually went up to stop them. I asked them for the wagon-master, or if there was any officer in command of the train; the men said no, they hadn't seen the wagon-master for a week; they were traveling independent. I told them they must hold on or I would shoot them; and we did hold them after considerable trouble.

That shows the confused state of that wagon-train. How many were those wagons? According to the testimony or Lieutenant-Colonel Myers (page 110, Court-Martial Record), then quartermaster-general for General McDowell, there were 2,000 or 3,000 wagons. It needs no measurement to know that an army wagon with its team of mules occupies a space in the road of some 40 feet; if you multiply 2,000 by 40 you will obtain the number of feet of that 10 miles of road that must have been occupied by wagons if they were in a single string. It would more than twice cover the 10 miles.

It was needless for General Pope, as usual, to try and make his order say what it did not. He says he intended General Pope to delay sending the trains till after he had marched (C. R., 27).

The order does not say so, but does order him to write Banks to send them down, saying at the same time that Banks is on the road to Warrenton Junction. And then the postscript makes the matter more
1248 urgent, for it says, "*If Banks is not at the Junction*, instruct Colonel Cleary to run the trains back to this side of Cedar Run."

Now, the testimony of Colonel Cleary (C. R., p. 120) and Captain Fifield (C. R., 122), before the court, shows that this order was given them immediately, and the trains were running until after two o'clock (10½ p. m. till 4 a. m.) from Warrenton to Kettle Run and back, thus preventing the troops from marching on the railway track, even if they could have done so with a vacant railroad in that pitchy darkness when the culverts were open.

This testimony was entered into at large upon the old record. General Pope claimed that the troops could have marched readily upon the railroad if the wagon road was blocked. Now, the movement of these railroad trains from the time testified to as being immediately after the reception of the order, until the last train, leaving about two o'clock in the morning, would have stopped General Porter's troops from attempting that, even in a starlight night.

General Morell reached General Porter's tent just as Captain DeKay arrived with the above order (at 9.50 o'clock, as General Pope, in his report of September 3, 1862, acknowledges, and he got the hour from the dispatch of General Porter, sent in reply, which Pope had not produced). That hour has been a matter of dispute. General Pope says in his evidence it was 9.15, but in his report he says it was 9.50. If the reply of General Porter had ever been produced by General Pope all that would have been settled. But the evidence of the generals who attended the consultation held in General Porter's tent immediately after De Kay's arrival is that it was about ten o'clock. Taking this ad-

mission from the report of September 3 as nearer, even, than General Pope's evidence, we have a right to conclude that it was 9.50.

General Sykes was immediately sent for (although DeKay said he was there already), and he and General Warren came to the tent, and General Butterfield also.

A consultation was then held.

Did General Porter propose any delay, or was he very reluctant to yield to the advice of his generals?

Who advised General Porter to wait two hours after one o'clock before he marched?

Why, as was proved at the former trial, General Sykes advised it, who is spoken of in terms of encomium by the Recorder, and very properly—he advised it; General Butterfield advised it, and General Morell advised it.

What were the reasons they urged? Why these:

I. Darkness.

The Judge-Advocate-General was obliged to admit that—

> At about eleven o'clock the sky became overcast and the night grew very, or as some of the witnesses express it, "extremely dark," and so continued until morning; it was a darkness, however, not complicated with cold, or rain, or storm. It is a noticeable fact, also, that the determination not to move at one o'clock, in obedience to the order, was not occasioned by this extreme darkness, but had been taken before Captain DeKay laid down, which was at eleven o'clock. (C. R., p. 303.)

This is in the face of the evidence then adduced, for General Griffin said:

> It rained a little about ten o'clock that night, I should think—very little—just sprinkled;

1249 And Lieutenant Weld said (C. R., p. 129):

> I went to bed about ten o'clock, and then the night was very dark, indeed; I heard some one, I think it was General Morell, who came into camp before I went to bed, say that he had been trying to find General Sykes's headquarters, but had lost his way; General Sykes's headquarters was very near ours.

Now, these two witnesses say that at ten o'clock, the time of that consultation, it was dark.

Then, too, all these generals had just come to General Porter's, and knew the darkness, and all of them testify that it was urged as a reason for deferring the march.

General Butterfield testified Captain De Kay said "that it was very dark."

Major Barstow, A. A. G. to General McDowell, witness for government, said (pp. 110–11):

> We reached Buckland Mills about nine o'clock in the evening, I think, or some time after dark. * * * About the time that we arrived at Buckland Mills there was a spit of rain, but it did not last long.

But this could not be believed by the Judge-Advocate-General.

All of this evidence on the old record has been strengthened beyond any doubt in this investigation, for General Morell says he had gone to General Porter's tent because he was unwell and the night was inclement; he got there at the time De Kay arrived.

Colonel Marston, of Hooker's command, a government witness, being asked by the Recorder (Board Record, p. 860):

> Do you recollect the character of the night of the 27th of August, 1862?—A. From nine to ten, along there, it was misty and rainy a little, fine rain, or heavy mist, and quite dark; I was out with the officer of picket line at the time, and lost my way, it was so dark. * *

What is more convincing as to this point is the fact that Col. T. C. H. Smith, a witness for the government on the old trial and on the present investigation, whose zeal against General Porter has burned brightly for sixteen years, admitted last July that, while he was at Bristow the night of August 27, 1862, a wind-storm occurred about ten o'clock (349–50, Board Record), when "you could hardly see a person two yards in front of you." "It was as black a time as I ever saw for a while." "Thick clouds." He did not recollect rain. "It was not a long rain."

This witness would never have told an untruth in General Porter's favor after his remarkable testimony on the trial in 1862.

General Patrick, who was at Buckland Mills (he kept a voluminous diary), testifies:

At 10 o'clock my orderly and one or two members of my staff dismounted at different times to feel for the road; it was one of the darkest of nights, the one of the 27th (p. 183, Board Record).

General Warren testified, page 42, Board Record, as follows:

Q. Do you know what the character of the night was after twelve o'clock on the night of the 27th and 28th of August?—A. It was dark; cloudy.

Q. I am speaking after that. Have you any recollection of the character of the night? It may have been dark and cloudy before.—A. Yes; all night. And then I remember with great distinctness, because the prospect of rain was such that we did not think we would have any rest at all. I do not remember lying down at all that night, or trying to sleep; and I recollect with great distinctness because we could only see things around the camp fires; there was a great deal of dust and smoke in the atmosphere besides.

The dust and smoke being clearly that resulting from the burning of government stores at Manassas.

1250 I shall not weary the Board by citing at any length the testimony of the 26 witnesses as to the darkness of the night of August 27, 1862.

Twelve witnesses swore that it was dark before the court-martial, to wit: General Morell (C. R., 145), Sykes (C. R., 176–7), Griffin (C. R., 160–3), Butterfield (C. R., 185–6), Reynolds (C. R., 169), Heintzelman (C. R., p. 81), Colonels Cleary (C. R., 121), Locke (C. R., 134), Captain Fifield (C. R., 122–5), and Montieth (C. R., 126), and Lieutenant Weld (C. R., p. 129).

And to crown all, and to show how mistaken are the few government witnesses who now testify the whole night was clear, we have the following testimony from a thirteenth witness, General B. S. Roberts, the nominal accuser of General Porter, on the Court-Martial Record, pp. 54–5.

Q. Were you up and awake, and observant of the character of the night between the 27th and 28th of August?—A. I was up repeatedly on that night, and observed the character of it.

* * * * * * *

Q. Was it a cloudy or rainy dark night?—A. It was cloudy at times, so as to be quite dark, and threatened, about 12 o'clock, to rain, so that I got up from where I was sleeping on the ground, found my wagon, and got into it, believing it would rain.

Before this Board we have the testimony of the following fourteen additional witnesses: Generals Warren (B. R., 30), and Buchanan (B. R., 214), Majors Hyland (B. R., 114), and Earle (B. R., 409), and Lieutenants Randol (B. R., 90), Baker (B. R., 203), and Davis (B. R., 389–90), who were all with General Porter at Warrenton Junction, Generals McKeever (B. R., 147), and Ruggles (B. R., 279), and T. C. H. Smith (B. R., 350), Colonels Thompson (B. R., 237), and Marston (B. R., 860), who were with General Pope at Bristoe Station, and General Patrick (B. R., 183), who was marching at Buckland Mills on the Warrenton Pike, with

the Recorder's five witnesses from Indiana, and General Mindil (B. R., 847), who was at Greenwich, and all of them agree as to the pitchy darkness of the night.

General Morell, Colonel Locke, and Captain Montieth strengthen their statements given before the court-martial.

Now, both Smith and Roberts were bitter enemies of General Porter, were two of the leading witnesses of the prosecution, and swore to what we contend, that the night was dark.

The circumstantiality of the memory of the other witnesses shows their credibility, and I submit that there can be no doubt of the intense darkness of that night.

I think it is clearly proven that it was dark at the time this consultation was held. Was it dark at one o'clock? Well, the best evidence on that point is this: Colonel Locke, who was up at that time of night writing dispatches and answering a dispatch from General Banks, which is dated between twelve and one o'clock (and we have just heard that General Banks was near Warrenton Junction that night), fell over a stump in going from one tent to another and injured his face. So that at one o'clock, when General Porter was expected to start, it was undoubtedly dark. Now, what evidence has been produced contradicting this? Why, the evidence of five men from Indiana and Captain Roath. Captain Roath's memory as to the preceding night was very defective. He did not recollect a severe rain which occurred a few days before. As to these five witnesses from Indiana, I do not see that their memory can be very accurate. There is nothing but a chicken-stealing expedition, and the act of a poltroon in scalding himself to prevent being called upon the next day to fight. One recalls the character of that night,
1251 as to darkness, by the circumstance that he saw an ambulance (which probably was white) a short distance from a camp-fire (which it is quite likely shone upon it). Another recalls it because of the foraging or chicken-stealing expedition. I am not aware that chicken-stealing needs a bright light. I think it is generally done under the cover of darkness.

The witness, Duryea, who was produced upon the former trial, testified that he marched from Warrenton towards Gainesville; that he did not experience any great or special difficulty in marching that night; but he did confess that his command halted every ten or fifteen minutes. We have the evidence of the other witnesses, whose names it is now unnecessary to mention, that they marched from Warrenton Junction, a few miles beyond, and took hours to go four or five miles. We have the testimony of General Patrick (and he was marching on the same road as these Indiana men, and General McCoy and Captain Roath), that it was so dark that he had to stretch a line of his men across the road in order to head off his troops as they came up and turn them off to the place of bivouac. It was so dark that one of his aids had to feel for the road.

And yet these men from Indiana are produced to contradict such testimony.

At this consultation General Porter handed the order to General Morell and to General Sykes, and said there was a chance for a short nap, or something of that sort, according to General Butterfield. Captain De Kay said that General Porter's expression was, "Gentlemen, there is something for you to sleep on," an expression upon which Judge-Advocate-General Holt, seeing treason and cowardice in every bush, rings the changes.

Of course, the expression meant nothing whatsoever. There was no

treason in it, no contempt in it. As to the contents of the order, the generals to whom it was handed could read it, and they need not make any comment upon it. Everybody understood what it was.

The bearer himself, Captain De Kay, testifies that he spoke of the earnestness of General Pope as to hour of march, as verbally stated to him.

The second reason for General Porter's delay of two hours was—

THE CONDITION OF THE TROOPS.

General Morell then stated: "We immediately spoke of the condition of our troops, they being very much fatigued, and the darkness of the night, and said that we did not believe we could make any better progress by attempting to start at that hour than if we waited until daylight." After some little conversation General Porter said, "Well, we will start at 3 o'clock; get ready."

General Sykes said: "We talked it over among ourselves, and thought that nothing was to be gained by moving at midnight, or 1 a. m., rather than dawn. I was very positive in my opinion, and gave General Porter my reasons. They were, first, that a night march was always exceedingly fatiguing and injurious to troops; that my command had already marched 12 or 14 miles that day; that I thought the darkness would cause confusion; that a constant stream of wagons had passed ahead of us from the time my command reached Warrenton; and above all, I thought that as but two hours, or three hours at most, would elapse between 1 o'clock and daylight, we could make the march in much better order, and march more rapidly, by starting at dawn, than if we started at the hour prescribed." (C. R., 176.)

General Butterfield testified that they said at the consultation in substance what is given above, and added:

In reply to their remark General Porter spoke rather decidedly that there was the order; it must be obeyed; that those who gave the order knew whether the
1252 necessity of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said.

This was the testimony given before the court-martial; and now General Warren before you gives additional testimony, as follows (pages 29, 30, and 31, Board Record):

Q. State who, according to your recollection, was present at that time.—A. I went there with General Sykes; the only persons that I now distinctly recollect seeing there, besides General Sykes, were General Porter and General Morell.

Q. State what occurred at that interview as nearly as you can.—A. General Porter made known to the division commanders that he had an order to move that night at 1 a. m.; General Sykes urged against moving at that hour, because the night was dark and it would result in confusion and loss of time, and would prevent the men getting the rest they needed. General Morell's remarks were to the same effect, and in addition his men had been late on the march that day, and some of the tired ones were probably not yet in camp, and it was very necessary for them to halt long enough to get some rest and prepare their meal. I think that both those generals urged for the longest delay that was practicable; and finally General Porter said, after considerable discussion and with a good deal of reluctance, that he would defer it for two hours.

* * * * * * *

Q. You saw General Porter on the night of the 27th at the time you have spoken of in his interview with Sykes and Morell; did he in that interview give any evidence in what he said, or in his manner, of his desire to obey the order or to disobey? What was his manner on that occasion?—A. The impression I got was, that he was very anxious to obey it literally, and that he only yielded in the change to the earnest solicitation of those who were under him.

Q. What was your own view as to the propriety of starting at one or three?—A. I think my views coincided with General Sykes.

Q. Did you so express them?—A. I may have expressed them so to him; I don't recollect doing so to General Porter.

Q. Was anything said in your presence about General Hooker being out of ammunition on the evening of the 27th?—A. I don't recollect any such statement.

General Porter has no desire to say that the blame should fall upon these advisers. Of course he takes the responsibility of his action. But it shows that it was present in more than one mind that it was his duty to march in such condition that he could arrive at Bristoe Station and perform the duty set forth in the order, to wit, to aid in pursuing the enemy and in driving him from the country. The condition of the troops is sufficiently set forth in these statements.

The third reason urged against marching at one o'clock was the

BLOCKED CONDITION OF THE ROAD.

It seems also that Captains Monteith and McQuade had reported on their return from tracing the road to Greenwich, up which General Porter was to have marched.

Captain Monteith said (p. 126):

We found wagon-trains coming in on the Warrenton road, intersecting the road that runs by the railroad just below Catlett's Station.

Q. In what condition did you find the wagons when you were returning to General Porter?—A. Some of them had stopped, and some of them were moving along.

Captain Monteith did not recollect what report he had made about wagons, and the Recorder has promptly seized upon the lapse of memory as a basis for a statement that he made no report as to the wagons; that it was too common a thing. That is, that 2,000 or 3,000 wagons in the road was too common a thing as interrupting a march for him to say anything about it! But that they did make report was apparent
1253 from the testimony of General Butterfield and General Locke, the former speaking of two lieutenants being sent out to examine the roads, and the latter saying he was present when a report as to the blocked condition of the roads was brought in.

Now Captain De Kay said he had told General Porter that the last wagons he had passed were as I read it, just west of Catlett's, moving slowly, and that he would overtake them about daylight.

As to these wagon-trains, upon page 202 of the document introduced this morning, General Pope's official report, you will find telegrams between General Pope and General McDowell. The question by General McDowell, at Warrenton Station, is given thus:

Q. Has Reno marched to this place, or has his order been modified?—A. He is marching to Greenwich—

is the answer of General Pope.

Further down you find—

Reno has his instructions, and is ahead of the wagon-train.

That is, the wagon-train was following after him. In another dispatch, at top of page 202, General Pope telegraphs General McDowell:

* * * Order Banks to send his trains off immediately, and also the trains you have.

On page 203 he asks—

Q. Have you sent the orders to Banks that I requested you to send?—A. Yes; to move upon Catlett's, preceded by his trains.

That shows that not only were wagons coming into Bristoe from Warrenton Junction, but also they were coming in at Catlett's Station. Captain Monteith, on page 126, Court-Martial Record, testified:

We found wagon-trains on the road from Warrenton Junction going by Catlett's Station. We also found wagon-trains coming in on the Warrenton road intersecting the road that runs by the railroad just below Catlett's Station.

Captain De Kay said, according to General Butterfield, that the road was full of wagons. So that it must have been known to General Porter that the wagons were coming into his road at Catlett's constantly, and consequently if he overtook them at daybreak it would be at Catlett's; but other witnesses say that wagons were in between Porter's camp and Catlett's Station at this very time. There were wagons parked between Catlett's and Warrenton Junction, according to De Kay (but the parking is described by General Warren (Board Record, 30, 45) as being like a jam of ice).

Q. You do not know whether the wagons were in the road after one o'clock at night until daylight so as to impede movements?—A. I know they were all over the field the next morning. Of course I didn't know in the night-time.

Q. I mean from 1 o'clock a. m. until day-time?—A. I don't know from actual experience. It is an inference from their coming down in the night and my finding them there in the morning.

Q. How late did they keep coming down during the night?—A. I don't know when it did cease.

Q. Did it cease at eleven or twelve?—A. It was later than that.

Q. Did they go beyond that station?—A. Yes, passed to the south of us.

Q. Did not they go into park beyond you on coming in in the night?—A. No such thing as parking. It was more pell-mell—"parked" like a lot of ice that jams in on the shore.

Q. These were not on the road?—A. Well, everywhere.

1254 Q. You don't know whether they were on the road or not?—A. I say I heard them coming in the night. I saw them in the morning, and the presumption is that they got there in the night-time.

On page 30 he testifies to that also.

General Porter's dispatches to General Burnside show the haste with which these wagons were passing at 4 p. m. that day.

Wagons are rolling along rapidly to the rear as if a mighty power was propelling them. * * * Don't let the alarm here disturb you.

Again, presumably at dark, in dispatch No. 19 of the statement, he says:

The wagons are rolling on, and I shall be here to-morrow. Good night.

Showing how continuous was the stream of wagons. So that it appeared upon the court-martial that these consulting generals knew about the darkness and the obstructed road.

According to General Butterfield, General Porter said, "In consideration of all the circumstances, I will fix the hour at three o'clock instead of one. You will be ready to move promptly." (C. R., p. 185.)

Now, as to these wagons, I will dispose of them very shortly by quoting what is said of them by some of the witnesses before the Board. By Lieutenant Weld, page 260:

A. Captain Monteith and myself were sent by General Porter just after day-light, about the gray of the morning, to clear the road of the wagons and train that were in it between Warrenton Junction and Bristoe Station. We found the road completely blocked with wagons. I should think fully one-half the wagons had the horses unhitched, or unharnessed and hitched either to the wheels or poles of the wagons. The wagons were in the road itself, and on both sides wherever there was a road in the woods for a wagon to be stuck. That was the state of the case for about three miles at least. The road was completely blocked.

I might as well read, in this connection, about General Porter's personal exertions.

Q. What three miles?—A. From Warrenton Junction, the first three miles.

Q. What kind of wagons were they?—A. Mostly regular Army wagons, mule and horse teams; six-mule teams.

Q. Did you keep ahead of General Porter on the march, or did you at times ride with him?—A. We kept ahead of him most of the time. At times he would catch up with us and seem annoyed that the wagons were not got out of the way faster. He

spoke pretty sharply to the wagoners at times. It seemed most of the way, though, we were a little bit ahead.

Q. When you did see him on that march, was he engaged in facilitating it, pressing it forward?—A. Doing everything he could to clear the road. He tried to do what I have seldom seen him do—he tried to use his authority as commanding officer for the sake of clearing the road. It was usually deemed sufficient to leave that to an officer of lower rank. On this occasion he did exert himself a great deal.

And Lieutenant Randol, page 90:

A. At three o'clock I was directed to take up the march following Weed's battery. We marched a short distance when we came to a halt. Riding to the front I found that the ford across Owl Run, a branch of Cedar Run, was blocked by wagon-trains of, as I understood at that time, Sigel's corps. Captain Weed, myself, and other officers, endeavored to make an opening by forcing the teams across, but we found it impossible. I remembered that I had seen a ford the day before higher up the creek which might be made practicable. I turned the head of my battery up the creek towards the railroad-crossing. Arriving at that ford I found that it was blocked also; there was a part of a battery and some wagons in it. I then moved higher up and put my horse in the stream and forded higher up until I found a place that I thought we could cross, and so reported to Captain Weed. We cut down brush and filled it in the stream and cut out a roadway, and then cut a roadway on the other side. The stream was wooded more upon the right bank than it was upon the left. After this was accomplished we crossed our batteries, my battery leading, to the other side.

1255 Q. About what time, according to your recollection, did you accomplish this passage of this stream?—A. It must have taken two hours or more. Our own teams stalled in crossing this ford. It was a new ford and very soft.

Then on page 91:

From Warrenton Junction to Cedar Run I should not think it was over a mile and a half or two miles. Here the approaches to the creek were abrupt and the bush on the other side was very abrupt. Here we found the creek blocked again on both sides; the wagons going up were stalled in the creek, four and five deep, and the drivers watering their teams, and it was almost impossible for us to get through. I recollect having quite a serious time with some of the drivers endeavoring to force them out of my way. At last we managed to mount the hill; and when we got near the station there we found difficulty again in passing through the teams which had halted to feed, and wagons and stragglers.

Then he speaks of the fact of wheels going in the mire up to the hubs, and having to cross runs "almost in battery front," because of treacherous nature of the bed of the stream.

Then Colonel Locke, page 295, speaking of Captain De Kay:

Q. Do you recollect what he said, or anything that he said, on delivering the order?—A. He said that he had been a long time coming on account of the difficulty in getting over the road; the darkness of the night and the road being so blocked with wagons. I know he grumbled a good deal about the trouble he had.

Then he speaks about candles being lighted in their endeavor to find their way. And on page 296:

Q. What was the state of things at the first attempt to get out of camp?—A. Very troublesome. We found the road blocked with wagons almost immediately upon leaving camp. There was trouble in the artillery moving, from the fact that in crossing the little stream or run that ran through the camp of the corps, great difficulty was experienced.

Q. Was your starting-point in advance of or behind that run?—A. You mean headquarters?

Q. Yes.—A. It was in advance.

Q. You did not have to get over that?—A. No, sir.

Q. Did you and General Porter ride together, setting out that night?—A. We did, I think, nearly the whole of the time; that is, I may say, we were together because we were both of us actively employed in endeavoring to get the road cleared, spurring up the teamsters and getting them to move the wagons, and in facilitating the movement of troops in every way possible.

Q. Did General Porter take a personal part?—A. He did most actively.

Q. Do you know any means by which that march could have been made more rapidly than it was?—A. I don't think that any human being, under the circumstances that presented themselves there that night, could have done better. I have been on some very troublesome marches during the war, falling back from Savage Station and White Oak Swamp, and that was holiday work to this.

Q. Was it necessary at times to halt? If so, why?—A. By reason of obstructions. Whenever we could clear the way, the troops would advance; then they would stop by reason of other obstructions which presented themselves of the same character. The road was not a good one.

Then Colonel Ruggles speaks of stumps in the road in places, and that the road was narrow and twisted.

Also, Lieutenant Weld speaks to the same effect.

And General Sykes, on page 177 of the Court-Martial Record:

As I anticipated, we ran upon this train of wagons within two miles of my camp; they encumbered the road for miles. Myself and staff officers were constantly engaged in opening the way for the head of my column. On several occasions I had to take my mounted escort and place them on the road with drawn sabers, to prevent the wagons from closing up any intervals that occurred. I do not think that, in my military life, I ever had so much trouble with a train as I had that day. The wagon-masters and teamsters were alike insubordinate.

1256 Now about the personal exertion of General Porter:

About two miles from Bristoe Station a stream crossed the road. On the Bristoe side of the stream General Porter and his staff officers directed and compelled all their wagons to be parked, so that none of them should precede my troops. That order was carried out. I was compelled to halt the head of my command on the Bristoe side of that stream for fully an hour, in order that my rear brigades might be united with the brigade in advance; and the cause of this separation was the train or trains on the road.

Please observe that he held his troops for nearly an hour in order to close up, and just before marching to Bristoe, which point he reached at 10.20. Then he asked:

Q. Did you ever see in him any slackness to do his duty; any evidence of a disposition to fail his commanding officer or his country?—A. No, sir; I never have. General Porter is an officer whose zeal is so well established that I hardly see the necessity of that question. I would like to add that General Porter's foresight, his providence for the wants of his command, and his attention to all the minutiæ of his command, are such and so great that I have often thought that he relied or trusted too little to the capacity of his division commanders. He seemed to do everything himself.

All this testimony is uncontradicted—the preponderance of testimony. There is hardly anything worth criticism in opposition to it. What Captain De Kay says is said in the vaguest manner. It shows that General Porter was anxious to obey the order in its letter by marching at one o'clock, and in spirit by marching his men so that they could arrive in condition for service.

One word about wagons, which I omitted. Colonel Myers stated, he being quartermaster to General McDowell, in charge of the trains, that wagons were coming in behind him, he being at Bristoe, or near Bristoe—within two miles of it, all night—rolling in all night. So they were not parked.

Captain De Kay stated among other things that General Porter said that his troops "would be good for nothing if they were started at that time of night; that if their rest was broken they would be good for nothing in the morning on coming up with the enemy."

At this point both the Judge-Advocate-General and the Recorder indulged in much rhetoric, of which I shall take no notice, except to say briefly what troubles them and why their trouble is needless. Testimony was introduced before the court-martial, Captain Fifield being the subject of examination, that if 150 efficient men—cavalry of course—had been sent forward at a proper time, the road might have been cleared, provided control of the road was given. Now it is asked why did not General Porter send forward these 150 men? Let me read what Captain Fifield says (page 125):

Q. With 100 efficient men, commencing at ten o'clock that night, do you think you could have cleared the wagon-road so as to have rendered it passable for troops?—A.

If I could have had command of the wagon-road and of sufficient force *when the wagon-trains commenced their movement*, I think I could have kept them from a jam.

Further down he says:

Q. Can you state what you would consider a sufficient number of men to have kept open the road?—A. I should judge that with 150 men under my command *at the time I speak of, taking charge of the road in the early part of the movement of these wagon-trains*, I would have been enabled to keep the road clear; I could have so disposed of them as to have accomplished that.

Now, if this wagon-train was parked "pell-mell" like a "jam of ice near the shore," and if, also, it was moving all along that road,
1257 extending over 10 miles. I ask if over that 10 miles 150 men could have operated so as to remove those wagons in three hours from ten o'clock until one, so that General Porter's command could have marched? It would have taken them three hours at least to have ridden to Bristoe Station, conceding that even in that darkness it would have taken them no longer, as, in fact, it would have done. If this clearing the road of wagons could have been done, why was it not proven on the court-martial that General Porter had the cavalry to do it with? There was no such proof. And the court-martial, if it had carefully examined the evidence, would have so found it.

It was in evidence that General Porter had only a few orderlies, but no cavalry with which to clear the road of wagons, and there was no contradictory evidence introduced. Colonel Locke says (page 136, Court-Martial Record):

Q. What number of cavalry had he at first?—A. When we first started he had some dozen orderlies.

Q. Did he get any, and, if so, how many, afterwards while on the march?—A. At Catlett's Station a detachment of the First Maine Regiment was assigned to him.

He therefore could but wait until Colonel Brinton or General Pope cleared the way for him.

Two hours later, when Lieutenant-Colonel Brinton, of the Second Pennsylvania Cavalry, came at midnight to General Porter's tent, having taken two hours to travel three miles, he was asked to clear the road of wagons with his cavalry, who were stationed at Catlett's, and he directed men to be sent out to do it, but the road was not cleared by late next morning. Now Colonel Brinton was not in General Porter's command, but under some one else, and General Porter, freshly arrived, cannot be charged with knowledge of his presence with cavalry at Catlett's, three miles off, nor therefore can he be blamed for not sending for him at ten o'clock to clear the road.

Captain Monteith, on page 127, Court-Martial Record, testifies:

Answer. When we first came to the wagons the woods on both sides of the road were so thick, and the road was so narrow, that it was impossible to turn the wagons out of the road, and we continued on until we came to a place where the wagons could be doubled or turned out of the road. We were also assisted by some cavalry sent with us; I think there were some half a dozen mounted men. After General Porter sent us with those cavalrymen, he also sent Lieutenant-Colonel Locke with either a company or a squadron of cavalry to labor in the same way.

Those were the cavalry obtained at Catlett Station. You will also find, Board Record, pages 316 and 317, a dispatch from General Porter to General Pope produced for the first time upon this examination:

H'DQ'RS 5TH ARMY CORPS,
6 *miles from Bealton, Aug.* 26—11 p. m.

Major-Gen'l JOHN POPE,
Com'd'g Army of Virginia, Warrenton Junction:

GENERAL: Your dispatch of 7 p. m. is at hand, and your instructions will be obeyed as rapidly as possible. My forces have been disposed of under instructions from the

General-in-Chief, and owing to the fact that their wagons have been sent to Falmouth for provisions (that on hand being expended), they may not move as rapidly as you may wish, but they will be there in time for effective service.

No troops are in my rear that I know of. Sumner is to land at Acquia, but I know nothing of him. I shall leave at the fords the cavalry force which has been guarding them.

I have no cavalry.

I am, general, very respectfully, your ob'd't servant,

F. J. PORTER, *Maj. Gen'l Com'd'g.*

1258 I will thank you to direct grain for 800 animals for 3 days to be sent to Bealton early in the morning. I am out entirely, and there is none to be had in this country. I have very few wagons.

F. J. P.

None to carry subsistence or ammunition, and have only 40 rounds of the latter. The wagons have not come up, and we have been hastened forward to occupy positions, and depend on the small transportation which General Burnside could provide. I have no ambulances and no medical supplies. I mention these facts in the hope you may provide deficiencies.

F. J. P.

That shows that General Porter had no cavalry, prior to his coming to Warrenton Junction at least.

General Porter did send messengers to General Pope, asking him to clear the road, as General Pope acknowledges, and General Pope sent officers back to do it. Yet General Porter's men had, when they came up, to park the wagons even as near General Pope as Broad Run, right by Bristoe.

General Locke, on page 296 of the Board's Record, testifies to this. That shows how efficient was the aid of General Pope's officers. General Locke's testimony as to clearing the road of wagons on Broad Run corresponds with that of General Sykes (Court-Martial Record), where he speaks of having to wait an hour.

That evidence shows how efficient was the aid of General Pope's officers.

But after the Judge-Advocate-General's failing to prove this sixteen years ago, my learned friend the Recorder has shown us that the world is growing wiser every day by filling this aching void with Lieutenant-Colonel Buchanan of the Third Indiana Cavalry. He is introduced, wonderful witness that he is, to prove that General Porter did have cavalry with which to clear the roads of wagons, and yet sent word to General Pope that he had not, and asserts before you that he had not.

Colonel Buchanan (B. R., p. 603) says he escorted some heavy batteries from Piedmont, Fredericksburg, Virginia, to General Pope, leaving on the 25th, Monday, at 10 or 11, and reaching Warrenton Junction in the evening of the 26th, probably after dusk when he got there. He saw General Pope the next morning, and was referred by him to General Porter. He remained at Warrenton Junction until the 29th, Friday, say 7 a. m., and returned to Fredericksburg. "If I have got the dates right, General Porter was there on the morning of the 29th. I was there when General Porter left in the morning of the day he started for Bristoe." He afterwards says that General Porter used his "men for orderlies 'for two days.'" He had about ninety men, one company.

Now, if Colonel Buchanan was at Warrenton Junction at all, he certainly was not there the night of the 26th, for General Pope telegraphs on the 27th to General McDowell from Warrenton Junction, "I have got no cavalry"; and again asks, "What became of the regiment of cavalry I directed you to send me yesterday?"

General McDowell answered that he had sent him two regiments, including a Maine regiment. (Pope's Report, January 27, 1863, pp. 211, 212.)

If, on the other hand, he got into Warrenton Junction on the evening of the 27th, he could not have reported the next morning to General Pope without going ten miles to Bristoe.

Again, if he got into Warrenton after dusk, as he says, and staid close by his command, and reported next morning, if the next morning was the 28th, then Porter knew nothing of his presence till the necessity for the use of him had passed, for at midnight before that, Colonel
1259 Brinton, of the Second Pennsylvania Cavalry, stationed at Catlett's, had been requested to send out a force from Catlett's to clear the road (G. C. M. R., p. 205), and General Porter's own men must have been on the march at the time when, as Buchanan testifies, he first saw him. Colonel Buchanan testified he saw him in the morning, after daylight.

Again, if he did not leave Warrenton Junction till the 29th, then he did not leave General Porter's troops on the march at all, for they were that morning at Bristoe, 10 miles away.

If he left General Porter on the 29th after he had this remarkable experience, then there was no use of summoning him as a witness, for General Porter did not need him to force the wagons out of the path on the road to Manassas Junction.

If Lieutenant-Colonel Buchanan escorted the guns that Lieutenant Randol came up with, he did not get there until dusk on the 27th; he did not, as he says, report to anybody till morning, when, of course, he could not report to General Pope, and if he did to General Porter, the need for him was gone.

Again, Lieutenant-Colonel Buchanan testifies that General Porter, on the morning he left Warrenton Junction, left when "the sun was an hour high, or more than that, probably." General Porter had 10 miles to ride to go to Bristoe. On the way he used personal exertions to get their wagons out of the way, and yet, according to General Pope, got to Bristoe at about eight o'clock in the morning!

Now, either Buchanan or Pope must be disbelieved, and inasmuch as General Pope says "*he is one of the persons interested in this case*," and that "*he deemed it his duty to bring Fitz-John Porter to justice*," I prefer to believe General Pope.

I think it has been shown both in 1862–'63 and in 1878 that General Porter had no means to clear the road of wagons.

The evidence of the time of march is not in much doubt.

The order was issued to march at three o'clock, and yet Judge-Advocate-General Holt prefers to say it was to march at daylight, because that was the impression of some of the witnesses, and because Captain DeKay said he who was to be the guide was not wakened from his blissful sleep until "just at dawn the day was breaking," but from his obliviousness to all things favorable to General Porter he never wakened.

Well, he was not needed to guide the column as far as Catlett's, for that road had been explored the day before by General Porter's own men, Captains Monteith and McQuade, and, besides, the command had tried to march and could not. No guide could see the road. After daylight the line of the railroad was the best guide to Bristoe, and he was not needed at all.

Under arms at three, the troops commenced to march, but could not get far because of darkness and obstructions.

The darkness was so dense that an aide had to get down from his horse, and with his hands feel for the road. Candles had to be used to light the way for the troops to the road.

Colonel Locke testified as to candles, and several other witnesses. General Buchanan testified as to an aide getting down from his horse and feeling for the road.

Guns stuck in the mud of a branch blocked the way; wagons, several in number, blocked the ford of a stream. Lieutenant Randol's battery of guns had to try several fords, and finally make a new ford, occupying several hours in so doing. Cavalry of the First Maine, obtained at Catlett's Junction, by Colonel Locke, were used in the efforts to turn
1260 aside the wagons crammed together in a narrow road, some of them moving and some stationary, and horses unhitched, and sometimes drivers absent, these wagons being driven pell-mell over road and over fields—three thousand of them, Sigel's, Reno's, McDowell's, all ordered down that way by General Pope, jammed in like ice near the shore; yet the Recorder calls this wagon jam a "common thing."

Why, as Colonel Locke says, "I have been on some very troublesome marches during the war, falling back from Savage Station and White Oak Swamp, and that was holiday work to this."

This in the day-time! What would it have been in a pitchy dark night and without cavalry?

A very different thing from marching as Sigel, McDowell, and some of the Confederate Generals did that night on open roads, some of them on a pike, and none of them obstructed by wagons. Now, had all this difficulty and trouble happened in the night-time, would General Porter's corps have arrived at Bristoe in fit condition to drive the enemy from the country? That was the sole purpose of his going there. As it was, General Porter finding no enemy there, asked permission from General Pope to rest his troops at Bristoe.

Generals Pope and Sykes both said at the court-martial that there was no necessity for his presence when he arrived. That the permission was granted there is no doubt, for General Pope remained there, and quick as he is to accuse, he never has denied it, though himself testifying as to the request. We must conclude, then, that the permission was granted, especially as Captain Monteith, an aide, went to him at Manassas that afternoon to obtain orders for General Porter, and General Pope sent word to General Porter that he should stay where he was (at Bristoe) till he received orders. Lieutenant Weld also was sent for orders at between four and six o'clock (B. R., 261) to General Pope, and was "told to tell General Porter to remain where he was; that he would be sent for when wanted."

Lieutenant Weld is confirmed in his evidence by this dispatch, addressed to Colonel Ruggles, and coming here to the Board from General Pope (p. 317):

HEADQUARTERS FIFTH ARMY CORPS,
Bristoe, Va., Aug. 28, 1862—5 p. m.

COL.: I send Lieut. Weld, of my staff, for orders, if any there be.
I am, your obedient servant,

F. J. PORTER, *Maj. Gen'l Com'd'g.*

What use, then, of introducing Dr. Faxon, from Massachusetts, to say that about some time in the afternoon, as he states it, he saw General Porter near the banks of Broad Run, at Bristoe, and heard him say:

"Go tell Morell to halt his division; I don't care a damn if we don't get there." And this notwithstanding General Porter's aides did not hear it, and are not aware that he ever used profane language. Now if our friend the learned Recorder indorses him, and quotes him to prove General Porter's listlessness and indifference to commands and to the

good of his country, then the learned Recorder, like the witness. and in his language, "don't know a word about" General Porter's having permission to stop, "and don't want to either."

After a short notice I shall pass by Major Duval, who testified that he rode from beyond Warrenton to Catlett's that night, and got to near Bristoe at about 3 a. m., turning out for wagons on the way. I think he has mistaken facts, and shows himself to have done so by saying

> General Ricketts, of whose command he was, was marching under
> 1261 orders to Thoroughfare Gap, when Ricketts did not get such an order until the morning of the 28th, and that he could not find

General Pope until after he had ridden nearly to Centreville in the morning and come back again, when Pope's dispatches show that he was at Bristoe till at least 10.40, and his report says he personally got to Manassas at twelve, just as General Jackson was leaving, and did not leave there till 5 p. m. Perhaps the major carried the darkness of his swift night ride with him, and was thus rendered invisible to the rebels, who were all around him between Manassas and Centreville, but never captured him!

General Porter had sent messengers over that road that night, and Major Duval need not be brought here to prove that a single horseman could pass over the road, avoiding wagons. Major Duval's opinion as to the possibility of troops being marched there at night could not have been formed then, because he knew nothing of troops being ordered to march over there, and his opinion formed sixteen years after is of little worth.

Colonel Cleary and Captain Fifield, with a party of twelve mounted men, conducted by an experienced guide, left Warrenton Junction for Bristoe about 2 o'clock a. m., but owing to the blocked condition of the road, were compelled to turn out of the way. In the darkness they lost their way, and did not reach Bristoe till late next morning.

I will briefly notice Lieutenant Brooke, who, about nine o'clock, judging from the date of his dispatches, started from Bristoe Station to ride toward Greenwich, a distance by the map of 4½ to 5 miles. He produced the envelopes of those dispatches, so there can be no dispute as to the time they arrived at their destination. The date of the receipt of the first dispatch was 12.20; so that it took him three hours and ten minutes to ride 4½ or 5 miles, with only 16 mounted men as an escort; and he does not think he lost his way when he traveled the Black Jack road to avoid the rebel pickets. That is a sufficient commentary on the darkness of the night. If he, on horseback, could only go 4½ miles in three hours and ten minutes, it is a conundrum whether General Porter could have got there at Bristoe, 10 miles away, to be of any effect, even starting at nightfall.

General Porter and his troops marched as quickly as possible, as was amply proved in 1862, no one dissenting save Captain DeKay and his friend the Judge-Advocate General, and no one can doubt it after the evidence we have heard before this Board.

General Porter arrived and reported to General Pope at 8 a. m., at Bristoe, according to General Pope's admission; his head of column came to Bristoe at 10.12 by the watch, having halted an hour and a half to close up at Broad Run, within supporting distance, if needed.

Now let me read what Colonel Locke says on that subject (B. R., 1042):

> Q. Do you recollect the hour in the morning of the 28th when you reached Broad Run, near Bristoe Station?—A. About eight o'clock.
>
> Q. About what time did you see General Pope?—A. Almost immediately after; it was a very short distance, that is, comparatively short, from the time we crossed the Run until we found him sitting on his horse on a slope of a hill beside the station.

Q. What time did General Pope leave?—A. I think he was about there for two hours or more.

Q. What time did General Porter's command get up?—A. After we met General Pope I was sent back by his authority with cavalry to cross Broad Run to order the trains parked—the commanding officer of the cavalry was to see the order executed. The head of our column was then approaching; they halted there so as to get closed up because the column was necessarily very much strung out by reason of the difficulties of marching during the night. I presume, before the head of the column struck that place where they went into position, it may have been between nine and ten o'clock.

1262

Q. What time did the rear get in?—A. I think that corps must have been up by noon.

And General (then Lieutenant) Weld, also of General Porter's staff, says of the same subject (B. R., 1035):

Q. Do you recollect Broad Run, a stream that crosses the road?—A. Yes; it crosses at Bristoe Station.

Q. Do you recollect the stream?—A. I do.

Q. Do you recollect at what time the head of General Porter's column reached that stream on the 28th—about what time you got there?—A. I should say we got there about eight o'clock. I know it was not far from that time.

Q. You were with General Porter?—A. I was.

Q. And his staff?—A. Yes, sir.

Q. What time did the command get up?—A. To Broad Run?

Q. To the point at which you halted.—A. It got up practically at the same time—within five or ten minutes afterwards—that is, the head of the column.

Q. What time did the whole corps get up?—A. As I recollect, the corps was halted there to collect the stragglers and to re-form them, and halted there some time while we rode ahead and met General Pope; I think the whole corps came there to where we met General Pope in the course of an hour after we arrived there, after we reached General Pope.

Inasmuch as Bristoe Station, to which General Porter was directed to march, was west of Broad Run, the head of his column had actually reached it about eight or eight and a half o'clock. Halting at Broad Run for an hour and a half, it then crossed that stream and arrived near headquarters, rather to the east of the station, at 10.20.

That answers the commentary about getting in at 10.20. Broad Run was, relative to Warrenton Junction, beyond Bristoe Station. Though the head of the column did not get across until 10.20, they were there an hour and a half before, at least. See also the testimony of General Weld (B. R., 1035).

The fact that the Ohio men were sent down the road for medical supplies the morning of the 28th does not bear on this subject. A handful of men with a couple of ambulances can, in day time especially, pick their way where an army cannot. It took them all day to go six miles and back, by their own admission. Nor do I believe that they went to Catlett's Station, for they do not seem to have seen it, and the railroad trains to which they say they went had all been run down the night before to the destroyed bridge at Kettle Run, according to orders of General Pope, and Kettle Run was only a mile and a half from Bristoe.

Captain Haddow speaks of a "break" in the railroad at Catlett's Station to which he went, when really the break was the burned bridge at Kettle Run, near Bristoe.

I submit, then, that General Porter did the best thing in carrying out the spirit rather than the letter of General Pope's order, and deferring the time of march two hours, which time could only have been employed by the troops in losing themselves and getting separated from their commands.

Especially so since General Pope's telegrams to General McDowell show his own urgent need of artillery, and the evidence shows artillery

could not have got along, as it was half admitted by the government witnesses on the first trial.

In view of all this, I respectfully submit that General Porter
1263 ought to have been acquitted of this charge of disobedience.

The more urgent the order the more earnest he ought to have been to move at a time to get there ready for action, and not wearied out.

The whole purpose of that order should be kept in mind: it was to pursue and drive the enemy back and clear them from the country. I am not a military man, but it seems to me that the common-sense view of the case is that General Porter was not, as the Recorder has suggested, to start, knowing that he could not get there with his command, but could arrive with only a handful of men, and be free from blame. I think he should have had—and I am thankful I can say he did have—the manhood to take the blame of not starting at one o'clock, because he had the nobler purpose of carrying out the spirit of that order rather than that ignoble one of shielding himself from blame while he knowingly frustrated the plans of his chief.

Now General Pope did not chide General Porter when they met, but accepted his explanation without comment, and talked with him for some time, leaving him at Bristoe until the morning of the 29th. General Pope says, on his examination at the court-martial, that it was not for him to chide his inferior officer for disobedience of an order; but, by the evidence of General Gibbon, we know that when the latter met General Pope at Centreville the morning of the 29th he, Pope, did give utterance to very angry expressions because of the movement of the night of the 28th. I do not know what was his habit, but there is an instance of angry chiding of somebody unknown. I don't wish it to be supposed that I think General Gibbon was censured, but it was somebody else.

General Porter, during the 28th, sent the following dispatches, which contain a history of that day, taken in connection with the previous dispatches:

BRISTOE, 9.30 A. M., *August* 28, 1862.

My command will soon be up, and will at once go into position. Hooker drove Ewell some three miles, and Pope says McDowell intercepted Longstreet, so that without a long detour he cannot join Ewell, Jackson, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on right of railroad; Heintzelman on left; then Reno, then McDowell. He hopes to get Ewell and push to Manassas to-day.

I hope all goes well near Washington. I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st, and I hope Mc's is up also. You will hear of us soon by way of Alexandria.

Ever, yours,

F. J. P.

General BURNSIDE, *Falmouth.*

[No. 23.]

The following just received from Porter, four miles from Manassas, the 28th, 2 p. m.:

"All that talk about bagging Jackson, &c., was bosh. That enormous gap—Manassas—was left open, and the enemy jumped through; and the story of McDowell having cut off Longstreet had no good foundation. The enemy have destroyed all our bridges, burnt trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply-train of forty wagons is here, but I can't find them. There is a report that Jackson is at Centreville, which you can believe or not.

The enemy destroyed an immense amount of property at Manassas—cars and supplies. I expect the next thing will be a raid on our rear, by way of Warrenton pike, by Longstreet, who was cut off.

"F. J. PORTER, *Major-General.*"

This is the latest news.

A. E. BURNSIDE, *Major-General.*

1264 During the afternoon cannonading was heard toward Groveton. It is thought that it is from General Sigel's guns, when it was really from General Gibbon's. General Pope sent word to General Porter to stay where he was, which he did until next morning, when General Porter received the order of the 29th, 3 a. m., directing him to march on Centreville. This order does not form the grounds for any change, but the Recorder desires to show that General Porter did not use any diligence to obey even it.

The 29th day of August is the momentous day, on account of which all these courts of inquiry and the court-martial and this board have been convened, and all this suffering for sixteen years has been, as we maintain, unjustly inflicted upon the petitioner.

THE MARCH FROM BRISTOE TO MANASSAS JUNCTION AND DAWKINS' BRANCH, ACCORDING TO THE DISPATCHES.

I come now to the consideration of General Porter's actions during the eventful day of the 29th of August, 1862, and I am happy that I can present, in confirmation of General Porter's statement and in support of my argument, something that is far better than the memory of man as to events that happened sixteen years ago. I refer to dispatches, some proven on the old trial, some that were presented to you in my opening statement, and several valuable ones that have been unexpectedly produced during the progress of this investigation. I shall, by the aid of his own and other dispatches, trace General Porter's movements from his receipt of General Pope's order of 3 a. m. August 29 to the time he marched from Manassas Junction or Station towards Gainesville.

General Porter, in a dispatch (No. 24 of his statement) addressed to General Burnside, dated Bristoe, 6 a. m. 29th, says, "Just received the following order," and then follows the 3 a. m. order, thus:

[No. 24.]

FALMOUTH, VIRGINIA, 5¼ p. m., 29.

Gen. H. W. HALLECK, *General-in-Chief:*

The following message has just been received:

"BRISTOE, 6 a. m., 29.

"To General BURNSIDE: *I shall be off in half an hour.* The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

"Sigel had severe fight last night; took many prisoners; Banks is at Warrenton Junction; McDowell near Gainesville; Heintzleman and Reno at Centreville, where they marched yesterday, and Pope went to Centreville with the last two as a body-guard, at the time not knowing where was the enemy, and when Sigel was fighting within eight miles of him and in sight. Comment is unnecessary.

"The enormous trains are still rolling on, many animals not being watered for 50 hours. I shall be out of provisions to-morrow night; your train of 40 wagons cannot be found.

"I hope Mac's at work, and we will soon get ordered out of this. It would seem from proper statements of the enemy that he was wandering around loose; but I expect they know what they are doing, which is more than any one here or anywhere knows."

Just received the following order—

Which shows that it was received about that time. His dispatch is dated 6 a. m.—

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, Aug. 29, 1862—3 a. m.

Major-General PORTER: Gen. McDowell has anticipated [intercepted] the retreat of Jackson. Sigel is immediately on the right of McDowell.

Kearney and Hooker march to attack the enemy's rear at early dawn. Major-
1265 General Pope directs you to move upon Centreville at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

GEORGE D. RUGGLES, *Colonel and Ch.*

A large body of enemy reported opposite. I am preparing and will hold the place until the last; the only fear I have is a force coming from Manassas Junction.

A. E. BURNSIDE, *Major-General.*

At the beginning of his dispatch he says, "I shall be off in half an hour." I am aware that there is a difference as to the hour of General Porter starting from Bristoe Station on the morning of the 29th. Officers cannot remember the precise hour unless there is some jotting in pencil or ink to sustain their memories, or some event to fix the time positively in their minds. I am aware that some of them say they started at six or half past six, and some say seven. Perhaps that discrepancy may be accounted for in this manner: that some of them did start, and others followed at the various hours stated. But I shall not depend upon any statement. It is sufficient that this dispatch says, at 6 a. m., "I shall be off in half an hour."

Now, as this was a private dispatch, General Porter certainly not expecting to be court-martialed for the proceedings of that day, would, of course, have told the truth, and, therefore, his statement that he had just received the order shows that he received it near 6 a. m.

No evidence given from memory can be equal to this. A written statement made with no motive of deception is always the best evidence. He announces that he will "be off in half an hour." Of course, then, he had given those orders, and even were there a doubt as to his having done so, and having received the order earlier than six, there can be no doubt that his *intention* was to march at six and a half o'clock. So if he did not, something must have occurred justifying any delay. But we do not have to depend upon this dispatch alone to justify the conclusion that General Porter's troops marched at half past six, for providentially a newly-discovered order, written on an Army of Potomac blank, was produced during this trial. It is as follows:

HEADQUARTERS ARMY OF THE POTOMAC,
August 29, 1862—8.30 a. m.

General MORELL:

General Porter desires you to keep closed up, and see that the ammunition train, which is, I learn, at Manassas, is put in with our trains.

Yours, respectfully,

GEORGE SYKES, *Brigadier-General.*

It is not denied that General Sykes' division of 4,500 men led that morning (I say 4,500; there were some over, but that is it in round numbers), and while in advance that order was written and sent back to General Morell, who, allowing four or five thousand men to the mile, must have been a mile to the rear. Naturally, on arriving at Manassas Junction, Generals Porter and Sykes learn about the ammunition trains. The order is written then. They have been marching two hours, and have marched four or more, probably five miles.

General Morell, arriving at Manassas Junction, being still a mile in their rear, wrote the following answer, which also turned up,
1266 newly discovered, at the right moment, produced by General Morell, and indorsed on the same paper:

MANASSAS JUNCTION.

GENERAL: There is an ammunition train here belonging to King's division. Nothing for us.

GEO. W. MORELL, *Major-General.*

Major-General PORTER.

Now, it may be claimed by the Recorder that General Sykes' dispatch was written previous to arrival at Manassas Junction. But here is the answer from Manassas Junction, indorsed on it, which shows that it was probably written almost immediately after—as soon as Morell got up there. I think the connection is very well established.

Inasmuch as General Porter's order, through General Sykes, had to travel at least a mile, which consumed, probably, as much as fifteen minutes, including the writing, General Morell, probably, got it a quarter of nine (8.45). He then must, on arriving at Manassas Junction, have asked for information concerning the train, obtaining it, have written the reply several minutes at least afterwards. His watch had been broken and he could not add the hour. Testimony as to the broken watch is given by General Morell and Major Earle. The transmission of his note to General Porter, over another mile of distance, must have brought its reception by Colonel Locke down to the hour of nine, at least, and, probably, to a few minutes after. Then Colonel Locke wrote the following answer, indorsed on the note:

GENERAL: We have sixteen wagons here with 396,000 rounds calibre .58; 20,000 rounds .69. We are ordered to support Gen. King. The head of the column is halted beyond the junction. Gen. Porter will be here soon; he rode ahead to find Gen. Pope. Gen. Gibbon has just come with an order from Pope to march to Gainesville at once.

Yours,

F. T. LOCKE, *A. A. G.*

This was written near the Weir house, a mile and a half or two miles, perhaps, from the actual junction, and a mile from the station, General Gibbon having arrived.

Well, Colonel Locke's dispatch had to be taken to Manassas Junction, for there is where General Morell's head of column was, as his note shows, and the evidence shows it too. The Recorder insists that the actual junction, and not the station, was Manassas Junction, and he may have full measure. This, then, was a mile and a half or two miles, but say that it was a mile. The delivery, with the writing, took, probably, fifteen minutes. In other words, General Morell must have received this dispatch at 9.15 or 9.20. He then had to find the wagons and dole out ammunition to 4,000 men.

He testifies that it took him half or three-quarters of an hour to do this, and well it might.

We are thus brought down to at least 10 o'clock a. m. before that column headed for Gainesville, and I submit that I have made very fair calculation for the Recorder, and have even understated what I believe to be true, especially as General Sykes' 4,500 men had to be supplied also. We have, then, one hour and a half for General Porter's troops to march about four, or more properly five, miles to Dawkins' Branch, for it is in evidence that they went down to the branch itself. (General McDowell, p. 98, C. R.) Troops march readily from two miles to two miles and a half an hour, if there is nothing to prevent them—if they are not

disturbed by the stopping up of the roads with wagons and
1267 other obstructions. And it is probable that, as two and a half miles an hour is a fast rate for a march, the head of his column reached Dawkins' Branch in one hour and thirty-six minutes, or about General Porter's time, as set out in his statement. Perhaps into that hour and thirty-six minutes the Recorder can compress those long way-side halts of an hour or half hour, which some of his witnesses, straining their minds' eye back sixteen years, have erroneously stated to have been between the junction and Dawkins' Branch, instead of being, as one really was, at the junction, where they were getting ammunition, and also being, as another really must have been, at the time some of the troops were deploying on Dawkins' Branch, and others coming up. There were chances for halting; they were probably the only two halts that occurred.

But we have other and further proof that General Porter did not arrive at Dawkins' Branch until between eleven and noon.

It is part of the Recorder's case to prove that General Porter arrived at Dawkins' Branch at ten o'clock. I submit that this statement as to supplying ammunition to 9,000 troops shows conclusively that he could not have got there at that hour. He must have got there at half past eleven, or thereabouts.

Dr. Abbott, a government witness before the court-martial, but now no longer living, testified that he brought the joint order from General Pope; that he left Centreville at 10.30 that morning, and after giving one copy to General McDowell, rode on to the front and gave the duplicate to General Porter "toward one o'clock" (C. R., 65). As he had eleven miles to ride, this would be a reasonable time in which to deliver the order.

But General Pope confirms this view by saying in his evidence that he had sent a written order to General Porter between eight and nine (p. 28, C. R.), meaning the order borne by General Gibbon.

In the joint order he said that he had sent this Gibbon order "an hour and a half ago," before the joint order was written. Well, call it half past eight. "An hour and a half ago" would put the date of the joint order at ten. Call it nine o'clock. "An hour and a half ago" would put the joint order at half past ten, as Dr. Abbott said it was.

Dr. Abbott had been sent from Manassas to General Pope at Centreville after General Porter had conversed for the first time with General McDowell. In other words, after Captain Piatt had given General Porter the verbal order to march on Gainesville.

Granting, for the sake of argument, that Dr. Abbott left Manassas at 8.30 (the date of this order as to ammunition), which was the earliest time they could have got there, he had to ride five miles at least to Centreville, taking the starting point to be the Weir house (six from the station), and after the interview with General Pope and the writing of the order he had to ride back eleven miles to Dawkins' Branch.

(Six miles Centreville to Manassas Station, three miles station to Bethlehem Church, two miles church to Dawkins' Branch. General Warren, B. R., 16, 51.)

In all, his journey was at least sixteen miles, and could not have taken less than three hours and a half, including his stopping at General Pope's headquarters and with General McDowell, together with other reasonable delays, for there was no necessary hurry in carrying either of the messages, for orders to the same effect had been given and were being carried out.

This would bring the hour of delivery down to twelve o'clock, noon.

They could not have halted long before the delivery of that order, for General McDowell rode forward when the halt occurred, and, ar-
1268 riving at the front, found General Porter had received the joint order. This was about noon, according to General McDowell's own statement.

General Porter's idea of the time of the march of the head of his column from Manassas Junction has never been materially modified, for on the McDowell court of inquiry General Porter testified that he presumed that hour "*was about ten o'clock. It may have been earlier. Ammunition had been distributed to the men, or was directed to be distributed, and the command to be put in motion.*"

This corresponds exactly with the facts, and with the newly discovered dispatches which General Morell produced for the first time during this investigation. Where is there evidence that General Porter has gotten up a new defense to fit after-discovered facts?

These careless slurs and flings have no foundation in any instance, but they do harm by influencing a public who cannot examine into the truth, and see how baseless they are.

THERE WERE NO HALTS ON THE MARCH TO DAWKINS' BRANCH FROM MANASSAS JUNCTION.

So much for the time of arrival at Dawkins' Branch. Now for the halts and incidents on the way from Manassas Junction.

The government witnesses of the Thirteenth New York, Joseph P. Clary, Mohle, and Gecke, were in the advance, and testify to a halt near Bethlehem Church. Clary says half an hour; Mohle, an hour or so, maybe less, and Gecke says an hour or an hour and a half. Now, Corporal Clary says McDowell's staff rode toward the front just as they commenced to advance, after they halted. Inasmuch as they were in the advance, General McDowell must have passed them only when he rode up at Dawkins' Branch to see General Porter. Private Mohle speaks of talking to a friend of his, of Ricketts' division, and therefore locates the halt up near toward Bethlehem Church. Now, Ricketts was not at Bethlehem Church at that time of day, nor at Manassas till noon, and King's division was stretched from Manassas Junction to Bethlehem Church, so the halt he thinks of may have been at Manassas Junction, and probably was, inasmuch as more intelligent witnesses testify there was no halt during the march.

Captain Gecke is so uncertain as to time of day and as to the lapse of time that his evidence is not worth thinking of, for he says he did not get to Dawkins' Branch till two or three o'clock. The Recorder's point as to General Porter's being present long before Longstreet would fail if Gecke's ideas of time were relied upon. Gecke says he was along by Bethlehem Church between eleven and twelve that day, and yet we know he was in the advance.

General Warren does not remember halting at all (Board Rec., p. 35). Nor does Colonel Johnson (p. 88, B. R.).

General Buchanan "don't know of any halt that was made, unless it might have been a halt to rest the men five minutes" (219).

Lieutenant Davis recollects no halts, though some might have been made (p. 397, B. R.).

General Morell says: "We moved without any detention" (B. R., p. 422). He recollects no halts (B. R., p. 431).

Now, there was no occasion for halts, and there is no reason to think that a long halt would be uselessly made.

General Porter having thus arrived at Dawkins' Branch with all his force, General McDowell having come up and the two generals having ridden off in consultation, it behooves us to see what each one of them knew of the enemy and of the position of their own troops.

1269 This point as to the time of arrival at Dawkins' Branch is comparatively a new point in this case, because now enters the nice calculation as to which force (the Union or the rebel) arrived at Dawkins' Branch, or in its vicinity, first. At the court-martial the government scouted the idea that Longstreet had arrived at all—did not care for such an investigation; and it was not made with any thoroughness.

The Recorder has charged before this Board that "the question solely is what General Porter knew was in front of him." I agree with him. He thus also states in his opening argument:

STRENGTH AND POSITION OF THE ENEMY OPPOSING GENERAL PORTER ON THE 29TH, AS KNOWN AND ESTIMATED AT THAT TIME.

The petitioner has asserted he knew Longstreet's force was in front of him all of the 29th August.

Certainly General Buford's dispatch,* which McDowell showed Porter at Dawkins' Branch, did not indicate whose forces had been seen going down, not the Gainesville and Manassas Junction road, but the Gainesville, Groveton and Centreville turnpike.

But if General Porter knew then all he claims to know now as to this force, it is certain that he did not communicate his knowledge to General McDowell; and his dispatches to and from his officers. to which he refers as being some of the sources of his information, do not warrant the claim he has made that he *then* knew of this large force being on Jackson's right, or whose it was.

From his skirmish or picket line was certainly the quarter from whence such information in this case had to be obtained, yet those who were out there gave no evidence of it.

GENERAL PORTER'S KNOWLEDGE OF THE PRESENCE OF LONGSTREET'S FORCE IN HIS FRONT, AND OF THE POSITION OF THE UNION TROOPS, WAS VERY FULL.

FIRST.

General Porter's dispatch to General Burnside, dated August 27, 4 p. m., and already quoted, shows that he had a great deal of knowledge as to the commanders of the Confederate forces; that he had learned at Warrenton Junction of the information contained in the dispatch sent to General Pope by Col. J. S. Clark, aide to General Banks, and detailed to attend the signal-station near Waterloo Bridge. This is the dispatch, found on p. 139, Report of the Committee on the Conduct of the War, vol. 2, Supplement:

(Received August 26, 1862, from near Waterloo Bridge, 2.45 p. m.)

UNITED STATES MILITARY TELEGRAPH.

Trains and troops still passing over the same route. A deserter, just come in, says *Longstreet's corps*, embracing Anderson's, Jones', Kemper's, Whiting's, and Evans' divisions, are located in the woods back of Waterloo Bridge. Thinks Hill's division at Jefferson.

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*A reference to this report, which is below, will show that Buford did not state Longstreet's arrival, but merely mentioned that a certain force had passed Gainesville, without saying who commanded it or to whom it belonged:

"HEADQUARTERS CAVALRY BRIGADE—9.30 A. M.

"General RICKETTS: Seventeen regiments, one battery, 550 cavalry, passed through Gainesville three-quarters of an hour ago on the Centreville road. I think this division should join our forces now engaged at once.

"JOHN BUFORD,
"*Brig. General.*

"Please forward this."

Now, those very names are used by Porter in the dispatch of the 27th.

Jackson's corps somewhere above Longstreet's. He appears truthful, and I credit his story. The entire district from Jefferson to Culpeper, Sperryville, and as far as
1270 Barber's, covered with smoke and lines of dust. The deserter reports the arrival last evening of the greater portion of Longstreet's corps at its present position.

JOHN S. CLARK,
Colonel and Aide-de-Camp.

Colonel Clark is identified in General Pope's report thus, page 15:

They could be plainly seen from our signal stations, established on high points along the Rappahannock, and their movements and force were reported to me from time to time by Col J. S. Clark, of General Banks' staff, who, both on that day and for many preceding and succeeding days, had given me most valuable and reliable information.

So that it can be seen that the name of Longstreet brought to General Porter's mind the commander of one wing of General Lee's army, and another dispatch, and General Pope's own dispatch to him, show that he knew that General Jackson commanded the other wing, thus:

BRISTOE, 9.30 A. M., *August* 28, 1862.

My command will soon be up, and will at once go into position. Hooker drove Ewell some three miles, and Pope says McDowell intercepted *Longstreet*, so that without a long detour he cannot join Ewell, *Jackson*, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on right of railroad; Heintzelman on left; then Reno, then McDowell. He hopes to get Ewell and push to Manassas to-day. * * *

Ever yours,

F. J. P.

General BURNSIDE, *Falmouth.*

The following just received from Porter, four miles from Manassas, the 28th, 2 p. m.:

"All that talk about bagging *Jackson*, &c., was bosh. That enormous gap—Manassas—was left open, and the enemy jumped through; and the story of McDowell having cut off *Longstreet* had no good foundation. The enemy have destroyed all our bridges, burnt trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply train of forty wagons is here, but I can't find them. There is a report that *Jackson* is at Centreville, which you can believe or not.

See how accurate the knowledge or instinct of General Porter was as to Jackson's whereabouts at that time.

"The enemy destroyed an immense amount of property at Manassas—cars and supplies. I expect the next thing will be a raid on our rear by way of Warrenton pike, by *Longstreet*, who was cut off.

"F. J. PORTER, *Major-General.*"

This is the latest news.

A. E. BURNSIDE, *Major-General.*

This "*raid on our rear by way of Warrenton pike by* LONGSTREET, *who was cut off*," which was expected by General Porter, August 28, had been accomplished on the 29th, at 10 or 11 a. m., and yet the Recorder questions his knowledge of that fact in the teeth of General Buford's dispatch and all the following dispatches and evidence.

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, Aug. 29, 1862—3 a. m.

Major-General PORTER: Gen. McDowell has anticipated the retreat of *Jackson.*

That is what George D. Ruggles, chief of staff to General Pope, says. These names were significant of the two branches of the Confederate army all through the Army of Virginia.

Sigel is immediately on the right of McDowell.

Kearney and Hooker march to attack the enemy's rear at early dawn. Major-General Pope directs you to move upon Centreville at the first dawn of day with your

whole command, leaving your trains to follow. It is very important that you
1271 should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

General Porter had also information from captured scouts that the forces of the enemy in front of him were Longstreet's, as will appear.

SECOND.

General Morell testifies (C. R., p. 146):

We had gone up the road towards Gainesville perhaps about three miles, when I met a mounted man coming towards us. I stopped him and asked him the road to Gainesville, and also the news from the front. He said he had just come from Gainesville, and the enemy's skirmishers were then there, to the number of about four hundred, and their main body was not far behind them.

General Griffin says: "We took three mounted prisoners, I know." (C. R., 165.)

This was the testimony upon the old trial. On the present trial we have the evidence of four witnesses, viz, General Morell, Colonel Locke, and Lieutenant Weld, all of whom testify that two or three men, scouts, were captured and examined by General Porter. They said that they were Longstreet's men, and that Longstreet was in their front.

The Board may recollect the announcement that we made asking them to appear if they should see the notice. We received no reply.

Before this Board General Morell testified (B. R., p. 422):

Q. What was it that occasioned the halting of the head of your division where it did halt, in the neighborhood of Dawkins' Branch?—A. There we were met by a man coming in from the front, who reported that Longstreet was at Gainesville; and very soon after that the skirmishers of my division met Longstreet's, and the report came in immediately.

Q. Reporting to what effect?—A. That they had encountered the enemy's skirmishers.

Q. Where were you personally when the head of your column reached the point where it halted?—A. I was at the head of the column. We were marching by the flank. I had just about got to the crest of the descent to that stream called Dawkins' Branch, when General Porter ordered us immediately to form line on the crest.

Q. How soon after you reached that point yourself did you get information that Longstreet's troops were in front of you?—A. Immediately.

Cross-examined, he says (B. R., p. 433):

Q. What time did you arrive at Dawkins' Branch when you halted?—A. I think about eleven or twelve o'clock. We came directly up from Manassas Junction.

Now, this is a question by the Recorder:

Q. Were not three men captured there and sent in by you?—A. There were two or three men there.

Q. Was not that the first intimation you had that the enemy were in your front?—A. That may have been the first intimation. There were two or three men sent in as prisoners; I merely questioned them a few words and sent them to General Porter.

Major Earle, A. A. G. to General Morell, testified before this Board (B. R., p. 411):

I also said to the general that we were perfectly satisfied they were Longstreet's men. I knew that fact from the fact that I think there were some skirmishers captured when we first went in, and General Morell told me they were Longstreet's men. I was satisfied, from the direction from which they had come, that they were Longstreet's men coming up from Thoroughfare Gap. General Porter said he was satisfied of that.

1272 Frederick T. Locke, A. A. G. and chief of staff to General Porter, testifies before this Board (B. R., p. 301):

Q. Were you present when two or three rebel scouts were brought in in the morning, after you got up to Dawkins' Branch?—A. I was.

Q. Did you know or hear at that time whose men they were?—A. I know what one of them said.

Q. What was it?—A. He said they were Longstreet's men.

And again (p. 306):

By the PRESIDENT OF THE BOARD:

Q. Were you present with General Porter on the 29th, when he received this information from the front indicating the presence of the infantry of the enemy?—A. At what time?

Q. Any time on the 29th?—A. I was there at the time when these couriers were brought in, and my impression is I was there on the spot with him when General Marshall sent in word from the picket-line.

Lieutenant Weld, A. D. C. to General Porter, testified before this Board, as follows (B. R., pp. 262–'3):

Q. Describe the further movements of the corps, so far as you know it, that forenoon.—A. After General Porter had got through with this interview with General McDowell, he followed after the corps. I am quite positive we got about a mile and a half beyond Bethlehem Church and found it halted there. General Porter sent out some cavalry skirmishers. They were halted on the side of the hill facing the west. The cavalry crossed the plain at the foot of this hill and went into the woods, not a very great distance in, nearly as I can recollect; I saw them going in a little distance. They captured two or three scouts of the enemy and brought them back to General Porter. I was close by General Porter.

Q. Where was that, with reference to the head of the column?—A. That was right at the head of the column. It was on the slope toward the west, and on a ridge that runs down to the brook; the brook runs through this plain. There were a few pine trees.

Q. How soon was this after the head of the column had reached this ridge?—A. I don't know; my impression is very strong that they were halted when we got there.

Q. Was it when you were first at the ridge with General Porter that these prisoners were brought in?—A. Yes; it was within a few minutes.

Q. How many prisoners were there?—A. Two, and, I think, three.

Q. Were they in uniform?—A. As much of a uniform as they ever had—a butternut suit.

Q. Did you know what they were?—A. Yes; Confederate soldiers.

Q. What happened when they were brought up to where you and General Porter were?—A. General Porter had a long conversation with them. My impression is that that were sent to the rear; I am not sure about that.

Q. Can you state that conversation?—A. I cannot; I did not pay any attention to it.

Q. Was it before or after these prisoners were brought in and had their talk with General Porter that you again saw General McDowell?—A. It was after General Porter had seen them and talked with them that General McDowell rode up and joined General Porter.

Q. State, if you know, anything about the interview between those two generals?—A. I do not; they went apart, I think, some little distance from every one else and talked together for some time. There was nobody near them.

Being cross-examined he said (page 268):

Q. Do you know what these prisoners said who were taken there?—A. Only from hearsay.

Q. Was it reported in your presence at that time?—A. I will not say that time.

1273 Q. Did you make any inquiries?—A. I cannot say when I did hear or know what the men said by hearsay; or whether I heard it that day or next, I cannot tell.

Q. Can you recall from whom you got the information?—A. No; I cannot. It was from some of the staff; I think very likely Colonel Locke.

Q. You are not prepared to swear whether or not you got the information at that time?—A No; I am not.

General Porter, by or before General McDowell's arrival in Dawkins' Branch, was thus in possession of sufficient information to show him that General Longstreet, with his corps, or, more properly speaking, with the right wing of General Lee's army, was in his immediate front. Has this been "*formed to fit the case*"? Were all these dispatches *invented* by General Pope for General Porter's benefit, and then printed in that volume?

THIRD.

And that knowledge was strengthened by General McDowell showing him the following dispatch:

HEADQUARTERS CAVALRY BRIGADE—9.30 a. m.

Seventeen regiments, one battery, and five hundred cavalry passed through Gainesville three-quarters of an hour ago on the Centreville road. I think this division should join our forces now engaged at once. Please forward this.

JOHN BUFORD,
Brigadier-General.

General RICKETTS.

Which conclusively shows that at a quarter before nine, seventeen regiments, five hundred cavalry, and one battery had already passed through Gainesville, which was, by the map they then had, distant two miles and a quarter from the position behind Carraco's house, where the enemy was supposed to be, and where he actually was. The correct distance by recent survey makes it two miles and a half in a straight line. Of course they had time to get to their own position before General Porter, who did not leave Manassas, four miles away, until ten o'clock.

It is to be noticed that General Buford, who had been with General Ricketts at Thoroughfare Gap the evening previous, to resist the advance of Longstreet, was so much impressed by the advance of this large force through Gainesville, that he suggested in this dispatch that General Ricketts' division be immediately joined to the rest of General McDowell's command.

This suggestion could not but have made a strong impression upon General Porter, whose lines were then deploying ready for battle.

FOURTH.

To this must be added the information which General Porter had undoubtedly received from General McDowell at or near Manassas Junction, to wit, that General Ricketts had fallen back the night before from Thoroughfare Gap before the advancing enemy.

General Porter also knew from Generals McDowell and Gibbon and from General Patrick of the fight near Groveton by Gibbon's and other brigades of King's division, and of their retreat or falling back to Manassas Junction, thus leaving the whole turnpike open to Longstreet, who, unopposed, could advance at will to the aid of Jackson.

Thoroughfare Gap was distant eight or nine miles from the enemy's actual position at 11 of the 29th, so that Longstreet would have
1274 had ample time to come through Thoroughfare Gap, and arrive in position by the time General Porter had arrived, whether this arrival was at 11.30 or 10. Added to this, General Porter's skirmishers were then engaged in his front. Lines of dust were seen about a mile from him, showing the presence of large bodies of troops. It is immaterial whether or not this dust was raised partly by Stuart's ruse of dragging brush, about which there has been so much talk; but of this latter subject I shall speak hereafter.

FIFTH.

He knew also that General Reynolds was supposed to be to the left of Groveton, where he actually was, and that General Sigel in that neighborhood, but beyond, was firing his artillery at General Jackson's troops.

He knew that King's division was just behind his own corps, and that Ricketts' division was coming up to Manassas Junction just behind King.

From the joint order he had learned that Generals Heintzelman, Sigel, and Reno were moving on the Warrenton turnpike, and "must now be not far from Gainesville." He had no information but that General Pope was at Centreville, eleven miles away. So much as regards General Porter's knowledge. Eleven miles away, General Pope contends, was on the field. We contend that it was not.

GENERAL M'DOWELL'S KNOWLEDGE AS TO THE PRESENCE OF LONGSTREET AND OF THE POSITION OF THE UNION TROOPS.

That General McDowell had at this particular point the same knowledge as to the position of the Union troops that General Porter had, will never be disputed. It has never been pretended that he did not, and it is sufficient for me, therefore, to make the assertion without adducing proof in any form. He must have known that General Jackson was in command of the force near Groveton lying opposite to the center and right of General Pope's army, and the dispatch of General Pope to him, running thus:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, Aug. 27, 1862—9 o'k p. m..

At daylight to-morrow morning march rapidly to Manassas Junction with your whole force, resting your right on the Manassas Gap Railroad, throwing your left well to the east. Jackson, Ewell, and A. P. Hill are between Gainesville and Manassas Junction. * * *

JOHN POPE, *Major-Gen., Com.*

Major-Gen. MCDOWELL.

shows conclusively that he did know what forces were opposite General Pope.

If certainty as to his knowledge is to be made doubly certain, it is sufficient to quote the following extract from his statement before his court of inquiry, published in 1863, page 38:

It was known to us by telegram from General Pope, at Warrenton Junction, that *Jackson's Corps* had come through Thoroughfare Gap, and was at or near Manassas, and, by a reconnaissance made by General Buford in the direction of Salem, that *Longstreet* was marching in the same direction after *Jackson*. It was in reference to what I did or did not do to prevent *Longstreet* coming through this gap, or to delay his coming through, that General Sigel finds cause for censure.

This was in reference to the charges against him, of which this court of inquiry found him innocent.

And now, as to the force which had come through Thoroughfare Gap the night of the 28th, and had passed through Gainesville, according to General Buford's dispatch, at quarter before nine that very morning.

1275 General McDowell said on General Porter's first trial, and persists in saying now, that he did not know what force was in front of him, what amount of force had come through Gainesville and Thoroughfare Gap, and that when he used in his dispatches the term "Longstreet," it did not convey to him the idea that Longstreet was the commander of a corps or of a wing of General Lee's army. This is what he said in substance. I do not use his exact language. I concede that the Southern army had not at that time been divided into so-called corps. The Union Army was divided into corps, and it was natural for the Union general to call by that name a large body of troops not an army and yet not a small portion of an army like several brigades. In this sense, I contend, it was that General McDowell, in the passage just

quoted, termed General Jackson's command a corps, when it was the left wing of the Southern army. The term "Longstreet's corps" is used in some of the dispatches to which I shall refer. General McDowell stated during his examination before you that the Southern army was not then divided into corps, yet he uses the expression in a contemporary writing of his own.

It is not necessary, however, to make any distinction between a corps and a wing, or body of the enemy, composed of several divisions. The idea conveyed is the same.

General McDowell had been put upon the alert by express command of his chief to get information in every possible way.

It will be seen, first, that General Pope telegraphed as follows to General McDowell:

WARRENTON JUNCTION,
August 26, 1862—5 a. m.

Please ascertain in some way whether the enemy be really in force at Waterloo Bridge. Sigel insists that he is, while Banks, who was there late yesterday afternoon, asserts positively that there was no enemy during the day there. You will see how important it is for us to know positively what has become of the enemy's forces which was in front, and where the enemy has gone which took yesterday the road toward Salem. *Please use every means possible to ascertain this at once.* * * *

JOHN POPE, *Major-Gen. Com.*

General MCDOWELL.

General McDowell telegraphs:

AUGUST 26, 1862.

I have just received your telegram, 5 o'c. a. m., directing me to ascertain in some way or other whether the enemy be really in force at Waterloo Bridge.

IRVIN McDOWELL.

General POPE.

Thus General McDowell had been urged to act upon the lookout for information as to the presence of the enemy's forces; had promised to do so in every way, and must have been using every energy, as a commander should.

On this same day General McDowell further telegraphed to General Pope as follows (Report Committee Conduct War, vol. 2, Supplement, p. 13):

[United States Military Telegraph. Received August 26, 1862.]

HEADQUARTERS THIRD CORPS,
Warrenton—3.30 p. m.

Major-General POPE:

* * * * * * *

I have directed Buford to march at dawn to-morrow toward Chester Gap to ascertain what direction the enemy have taken on our right.

* * * * * * *

However persons may have differed as to the force at Waterloo, Sulphur
1276 Springs, or elsewhere, all agree in one thing, the movement of the enemy towards our right from Rappahannock to Warterloo.

The force of the enemy now seems to be above Sulphur Springs. * * *

IRVIN McDOWELL.

Now, a reference to the map will show that Sulphur Springs is below Waterloo, thus showing that Colonel Clark's dispatch, quoted hereafter, conveyed at least the same information as to the *whereabouts* of the enemy that General McDowell indorsed. But that is not all; for to this dispatch of General McDowell's he apparently appends a postscript, or else what was sent as another dispatch immediately after, for it is coupled with the one just quoted from. This postscript or telegram is as follows (same page, same report):

I have just received your telegrams of 2.20 and 3.15 p. m. I trust that Buford's reconnoissance to-morrow will obtain the information you desire concerning the move-

ment of the enemy across the Sperryville pike in the direction of Gainesville cross-roads and Salem. *I also received from General Banks'* signal officer the account of this movement. * * *

IRVIN McDOWELL,
Major-General Commanding.

Now, who was the signal officer? Why, Colonel Clark.

I think this shows that he had seen and read Colonel Clark's dispatch (p. 139, General Pope's Report to Committee on Conduct of War), which is as follows:

UNITED STATES MILITARY TELEGRAPH.
Received August 26, 1862, from near Waterloo Bridge, 2.45 p. m.

Sent to General Pope from the same telegraph office.

GENERAL POPE: Trains and troops still passing over the same route. A deserter just come in says *Longstreet's corps*, embracing Anderson's, Jones', Kemper's, Whiting's, and Evans' divisions, are located in the woods back of Waterloo Bridge; think Hill's division at Jefferson, Jackson's corps somewhere above Longstreet's. He appears truthful, and I credit his story. Entire district from Jefferson to Culpeper, Sperryville, and as far as Barber's, covered with smoke and lines of dust. The deserter reports the arrival last evening of the greater portion of Longstreet's corps at its present position.

JOHN S. CLARK, *Colonel & A. C.*

Now, Longstreet's corps is just stated there to be what it actually was. There were Jones', Anderson's, Kemper's, Whiting's, and Evans' divisions.

I have shown heretofore that this John S. Clark was General Banks' signal officer, describing whom General Banks had telegraphed to Colonel Ruggles, chief of General Pope's staff, from the headquarters of General McDowell's corps, on the 25th of August, at 11.25 a. m. Telegram is to be found on page 137 of the same report.

I have already quoted the description that General Pope himself gives of this officer, Colonel Clark.

By a dispatch, dated Warrenton Junction, August 25, 1860, 9.32 p. m., to be found on page 137 of his report to the Committee on the Conduct of the War, supplement, part 2, General Pope orders General Sigel to force the passage of the river at Waterloo Bridge the next morning, and adds:

You will communicate with me by telegraph from Warrenton.

JOHN POPE,
Major-General Commanding.

Sent in the care of General McDowell at Warrenton.

This dispatch shows that communications from Waterloo Bridge by telegraph had to be sent from the telegraph station at Warren-
1277 ton to General Pope at Warrenton Junction. It shows that the telegraph office which received all these telegrams containing information of the presence of the enemy to the north of the Warrenton pike was at General McDowell's headquarters, and this dispatch of Colonel Clark was sent from that office, and, therefore, about the same time General McDowell was telegraphing to General Pope, and at the same office from which he telegraphed, Colonel Clark's message was sent containing precisely the information which General McDowell denied ever having obtained—sent, as it were, under his very eyes, and he on the alert through the eyes, ears, and brains of scouts, signal officers, telegraph operators, and two (his own and Sigel's) whole army corps!

Now I submit that these facts, coupled with the foregoing and following extracts from dispatches, prove that General McDowell has forgotten that he was possessed of the same knowledge as to the position

of Longstreet's command that General Pope was, and that General Porter was, which was the knowledge derived from information by Colonel Clark, to wit, that Longstreet's corps or command embraced Anderson's, Jones', Kemper's, Whiting's, and Evans' divisions, and that the greater part of Longstreet's corps had arrived on the 25th in front of the Union forces, near Waterloo Bridge.

In addition to this, General McDowell sent the following dispatches:

WARRENTON, *Aug.* 26—10 p. m.

One of Sigel's scouts reports that since daylight till four o'clock this evening there has been a continuous line of troops, although cavalry chiefly, passing forward to White Plains, where they are encamped now—Generals Jackson, Longstreet, and A. P. Hill, and Stuart's cavalry. This man has the same story as to the names of the generals who were passing through Thoroughfare Gap. * * *

IRVIN McDOWELL.

Major-Gen. POPE, *Warrenton Junction.*

Page 207 of Pope's report, January 27, 1863, and also in the same report on page 206:

WARRENTON, *August* 26, 1862.

General King reports he has received a flag of truce from General Anderson to return a woman dressed in man's clothes, captured by them this morning. I report the circumstance as it is the first information that I have of the presence of this division in our immediate front. I understand Anderson to have Huger's former division.

This division, so far as I have learned, was the last of those now before us to leave Richmond. I was at Louisa Court-House when Longstreet was at Raccoon Ford. If I am right in these suppositions, it seems to strengthen the impression I have that the enemy's extreme right rests at Sulphur Springs. I draw another inference from this flag of truce—that there is at least a division at Sulphur Springs. It is true, these are mere inferences, and I only give them as such; for other divisions than those we have heretofore heard of may have left Richmond since our last information.

IRVIN McDOWELL,
Major-Gen. Commanding.

Major-Gen. POPE, *Warrenton Junction.*

General McDowell also telegraphed:

WARRENTON, VIRGINIA, *Aug.* 27, 1862—8.45.

I have just received your telegram of 7.30 a. m. I have ordered Sigel to send immediately a strong advance from his corps to seize the position of Buckland Mills, on Broad Run, and follow immediately with his corps.

Can you spare time to come to the instrument and have a conversation with me?

IRVIN McDOWELL,
Major-General.

Major-General POPE.

This and other telegrams too numerous to cite, but found in the appendices to General Pope's official report of January 27, 1863, show how anxious Generals Pope and McDowell were to prevent Long-
1278 street from coming through Thoroughfare Gap, Jackson's troops being already through. "Longstreet" must have meant to them a very large body of men, indeed the remaining half of General Lee's army. No general could doubt that General Lee would come up as rapidly as possible with *all* his remaining force to join General Jackson's wing or corps, surrounded on all sides by Union troops as it was. No general did doubt it, and both General McDowell and General Pope were straining every nerve to keep the two wings of the Southern army from uniting.

On the night of the 27th General Pope changed his plans, and ordered McDowell to come with all his force on Manassas Junction so as to crush Jackson before succor came, and General McDowell even then so feared that General Pope was making a mistake that he ordered General Ricketts' division (8,000 men), two brigades of cavalry, and six batteries of

artillery, in all, say, 11,000 men, to guard Thoroughfare Gap (McDowell's statement, p. 42). Eleven thousand men were more than General Porter had. He had but 10,000. Thoroughfare Gap was a strong position properly held; yet Porter was at Manassas *Plains*. Porter was left to *attack* the force that had come through Thoroughfare Gap, but Ricketts was sent with *more* men to prevent their coming through. An ounce of prevention, and *less* than an ounce of cure! This would not have been done because any insignificant force was knocking at that gate. But let some of General McDowell's orders, dispatches, and avowals speak for themselves.

Late that evening of the 27th General McDowell wrote the following order, set out on page 39 of his statement before his court of inquiry:

11.30 P. M., HEADQUARTERS THIRD ARMY CORPS,
Buckland Mills, August 27, 1862.

It being understood that a *large division* of the enemy under LONGSTREET left Salem at 4 o'clock p. m. for the enemy's position in the direction of Manassas through Thoroughfare Gap—

Now, we know he did leave there at 4.30 p. m. That is the evidence. The scouts who brought this information saw it accurately; they saw the force and they could tell what the force was. Did they not tell? What is the business of scouts? Now, then, see what he orders in this dispatch, and how important he thinks it to guard Thoroughfare Gap:

and is now on the march, the following preliminary movements of the left wing of the army will be immediately made: Major-General Sigel's corps will, without delay, be concentrated at or near Haymarket and Gainesville.

General Sigel had the largest corps in that army—four divisions.

A division of the Third Corps will be left at Buckland Mills to operate against the flanks of the enemy or march to Haymarket, as shall be found most expedient.

Now, there are five divisions left in strong position, or to be left in strong position.

King's and Ricketts' division will march to Gainesville, and start at 2 o'clock a. m. to attack the enemy's position in the direction of Manassas. This attack will be supported, under the provision of the general order from headquarters of the Army of Virginia, by the command of Major-General Heintzelman, now at Greenwich, and which will be on the right of the attack.

By command of Major-General McDowell.

S. F. BARSTOW,
Assistant Adjutant-General.

Thus a *whole corps* (Sigel's) and also a division of the Third Corps (presumably General Reynolds') were to be left to guard Thoroughfare Gap against the "*large division* of the enemy under *Longstreet*." Was this "*large division*" an insignificant body of men?

1279 General Sigel's was the largest corps in the Army of Virginia. It had four divisions, numbering 10,000 men, and General Reynolds had about 4,500 men, so that 14,500 men were left to oppose the advance of a column under Longstreet (I may state here that we concluded it was General Reynolds who was to be left at Buckland Mills, because all other generals are mentioned; they are directed to perform some duty), although Jackson was about to be crushed, and the presence of the entire Union Army would have been desirable to render this result a certainty.

Before this order was carried into effect (as he says on page 40), he received General Pope's dispatch of August 27, 9 p. m., ordering him to march upon Manassas Junction with his whole force. He immediately issued an order on the next day, commanding Sigel, Reynolds, and King to march upon Manassas Junction, and General Ricketts to march to

Gainesville, and if there should be no indication of the approach of the enemy from Thoroughfare Gap to continue his march.

On page 42 he says:

Captain Leski, an aid-de-camp on my staff, testifies that the force sent under General Ricketts to Thoroughfare Gap consisted of four brigades of infantry of about 8,000 men, two brigades of cavalry, and six batteries of artillery.

That by General McDowell's direction, he went, on the night of the 27th and 28th of August, to see if troops could be sent up to the gap on the west side of the stream running down by Buckland Mills, which he found it would be impossible to do; that shortly after General McDowell sent him also to Thoroughfare Gap, with instructions to bring as early news as possible about the enemy.

Captain Leski sent me back the following:

"10.15 a. m.

"The enemy is advancing through the pass.

"W. LESKI, *Captain and A. C.*

"Colonel Wyndham will hold them as long as he can, and asks to be reinforced.

"W. L."

Of these orders General McDowell says, on page 44, same statement:

My preliminary order of August 27 was based on this order of General Pope's and on information I had received at Buckland Mills, and on my way there, which *information was then unknown to General Pope*, who was now away from telegraph lines. *I directed the holding of the strong position of Buckland Mills and Haymarket with a support at Gainesville* (the three places being nearly equidistant from each other), *so as to hold or check any force coming through either gap*, while two of my divisions, with the corps of Heintzelman and Reno, should go against *Jackson* in the direction of Manassas. I sent to General Pope, soon after I received it, the information I had obtained of the near approach of *Longstreet*, and informed him of the dispositions I had made. My communication had hardly gone before I received his order to march my whole force to Manassas; hence my General Order No. 10, changing the arrangements I had made and conforming them to General Pope's order. *It will be seen that whilst I did so I provided for the contingency of an attack from* LONGSTREET *from the direction of Thoroughfare Gap, which the information I received left no doubt would be made if we did not get forward most expeditiously and at the earliest moment.*

Again, on page 45, he speaks of—

The provision I had made for Longstreet, and which General Pope says was not in compliance with his orders, and could only be justified by the danger I might find myself in from an attack on the rear of my column.

Why does General McDowell fall into the use of the names of Longstreet and Jackson continually without mentioning any other generals, designating by these names the two halves of the Southern army, unless he knew that Longstreet and Jackson were General Lee's two lieutenants, and each commanded a wing? I submit that he *did* know it.

1280 THE CONFIDENTIAL RELATIONS BETWEEN GENERALS M'DOWELL AND POPE.

That Generals Pope and McDowell had been in the closest relations to each other; that General Pope relied upon McDowell, upon whom he unhesitatingly called for advice, and accepted it; and that General McDowell not only readily gave the advice, but was prompt to volunteer it, will be seen from the following. For the 28th of August, he says, in his defense before his court of inquiry, p. 57:

It will be seen I had *communicated freely* with the general commanding throughout the campaign, and * * *

On page 57 he also says:

Under the belief the enemy was moving to the south of us, to go entirely around and fall on our enormous wagon train under Banks, and was now on the opposite side of Manassas from where I was, and *seeing from General Pope's notes that he was making mistakes as to distances and places, I wished, in order to answer his request, to give him fully*

my views, as I had been doing throughout the campaign, to confer with him personally. I went to Manassas for that purpose.

My knowledge of this country was referred to, because the topographical maps of Northeast Virginia had been made at my headquarters, and largely under my directions, and I was therefore supposed to be well acquainted with the whole country.

Very properly General Pope relied upon General McDowell. He had a high opinion of General McDowell's judgment and his ability as an officer, as well as a belief in his knowledge of the country, and hence sought his advice. General McDowell knew that General Pope was ignorant of the geography of the country, and was properly prompt to volunteer his superior information.

On August 25, 9.30 a. m., General Pope begs him—

Communicate with me frequently by telegraph from Warrenton.

On August 26, 3.30 p. m., General McDowell telegraphs General Pope from Warrenton—

No doubt these various suppositions may have occurred to you, but I have thought it not inappropriate to recapitulate them here with reference to the concentration of forces in this direction, which I have herein suggested.

Other and many expressions in their respective dispatches show their close relations, and General Pope's dependence upon General McDowell when the latter can be reached. Plans are suggested by General Pope and as promptly altered on receipt of prompt replies from General McDowell, "Execute the movement you suggest, August 27, 8 a. m. Give me your views fully." General Pope says, August 28, 1862, 2 p. m., from Manassas Junction, "Come no further in this direction with your command." And on this General McDowell goes to Manassas Junction to confer with him.

From these extracts I think it can fairly be concluded that General McDowell knew, or supposed he knew, the plan of General Pope to fall behind Bull Run, or at least to be re-enforced by the troops from Alexandria before hazarding a battle with the combined forces of Longstreet and Jackson.

General McDowell's own forces were ordered upon Centreville the day before, and now they had been ordered back to the turnpike from Manassas in order, if possible, to crush Jackson before Longstreet got up; or, if he had got up, no battle was to be fought unless an order to that effect was given.

I think, therefore, General Porter's memory was correct when he said General McDowell told him the future plan was to fall behind Bull Run, or not fight until re-enforced by other forces of the Army of the Potomac.

1281 There is another proposition which we make, which was denied in 1862–'63, and ignored by the court-martial, and which is ignored still to a great extent by the Recorder, which was not admitted by General McDowell, and which, as I recollect, has never been admitted in the many publications of General Pope during all these sixteen years up to the present date; that is, that the evidence introduced at the former trial, and the Confederate evidence now introduced, show that Longstreet, with 25,000 men, was in General Porter's front on his arrival, August 29, 1862, at Dawkins' Branch. The sentence of the court indorsed the theory of their absence, even when the whole course of General Porter's defense affirmed their presence. The Recorder says that General Porter's case shows upon its face, as presented by him, that it has been altered to fit the facts. But his whole defense by his counsel—all of a great number of questions put by his counsel before the court-

martial, show that such was his belief—that Longstreet was there. The affirmation by the other side was then, and still is, that there was nothing but a few clouds of dust and some cavalry in his immediate front.

THE CONFEDERATE AND UNION EVIDENCE NOW INTRODUCED SHOWS THAT LONGSTREET, WITH 25,000 MEN, WAS IN GENERAL PORTER'S FRONT ON HIS ARRIVAL, AUGUST 29, 1862, at DAWKINS' BRANCH.

Having thus considered the knowledge possessed by General Porter and General McDowell of the presence of the enemy opposing them on the 29th day of August, and it having been strenuously denied that the enemy was thus present by all the government witnesses on the first trial, and the sentence of the court having indorsed the theory of their absence, even when the whole course of General Porter's defense affirmed its presence, it is now fitting that we should consider the evidence of their presence introduced at this trial, to show that General Porter's belief that he had more than clouds of dust and a few cavalry opposing him was correct. A careful examination of the dispatches of the Confederate and Union reports, and the oral testimony introduced before you, will show clearly the incidents of the advance of Longstreet's column, its formation in battle line and of its various movements during the 29th upon Manassas Plains, near Groveton.

On the afternoon of the 27th General Longstreet arrived at White Plains, some four or five miles northwest of Thoroughfare Gap. Early in the morning of the 28th he arrived at Thoroughfare Gap, according to the telegram of Captain Leski, heretofore quoted, which shows that the enemy were passing through Thoroughfare Gap at 10.15 that morning.

After resistance by General Ricketts in the afternoon, General Wilcox, commanding a division of three brigades, was sent off to the north, to Hopeville Gap, in order that he might come through and turn the Union flank. General Hood was sent over mountain roads to endeavor to turn that flank also. Finally, in the evening, General Ricketts retreated, and the enemy, unopposed, marched through Thoroughfare Gap, and at least the divisions of Hood and Jones were encamped to the east of the mountains. General Wilcox also had passed through Hopeville Gap and encamped that night east of the mountains.

General Ricketts had fallen back on Gainesville, and early in the morning had fallen still further back to Manassas Junction, reaching there during the afternoon. General Longstreet's column took up the march very early in the morning, about sunrise, and advanced through Haymarket to Gainesville. General Wilcox, coming down the
1282 Hopeville Gap road, halted, and waiting till the main column passed, joined in his three brigades and joined in their immediate rear. The column marched in close order, according to the testimony of General Longstreet, between Haymarket and Gainesville.

General J. E. B. Stuart, having come from the left of General Jackson's force, near Sudley Springs, met General Robert Lee at the head of Longstreet's column, and marched through Gainesville some distance down the turnpike, toward Groveton. While the main column was still advancing, and without halting it in the slightest degree, the cavalry escort of General Stuart passed through between the ranks and came to the south of the turnpike. This cavalry numbered three hundred to five hundred men, more probably five hundred, because that was the memorandum made by an eye-witness at the time (General Buford).

This right wing of the Confederate army numbered at that time in the

neighborhood of 25,000 men, having no cavalry attached to speak of, save Stuart's force, as above mentioned, and Robertson's cavalry on the right flank when it came into position. The hour of arrival at Gainesville cannot be disputed with success by any statements based upon the memory of individuals, or even upon the hours stated in the official reports of Confederate generals, because the very strongest evidence that can be produced must be the evidence of a person charged with closely watching their movements, a general knowing the importance of ascertaining their force and the time of arrival, his statement being embodied in the form of a dispatch, dated evidently by the watch—for the date is given to the minute, at 9.30 o'clock—this dispatch being directed to his commanding general, with the request to forward, meaning, of course, to forward the telegram to the commander of his corps, and ultimately to the commander-in-chief.

While the column was still marching down from Gainesville toward Groveton, General Lee and General Stuart drew off to the right of the turnpike and held a consultation for a quarter of an hour or more, General Stuart giving General Lee information as to General Jackson's whereabouts, and an examination of the map taking place. This was stated by Colonel Blackford (page 693, B. R.).

Whether General Lee left before General Stuart left that position or not is not certain, nor is it material, for Colonel Blackford says that he and General Stuart and others remained by the side of the turnpike for one little time, giving information to the army as it advanced. Afterwards, General Stuart rode to the right along down the railroad.

After coming some distance down toward Hampton Cole's, Colonel (then Captain) Blackford was sent off by General Stuart with a powerful field-glass to ascertain what enemy was advancing in their front.

He rode about, now coming down by Vessel's toward Dawkins' Branch, in the neighborhood of Deat's house, now down past Carraco's house, on the other side of the woods toward Dawkins' Branch in that direction, until he had ascertained that the head of the Union column was there. (Page 695, B. R.)

"Just about making its appearance; I think they deployed on both sides of the Manasses and Gainesville road. * * * I went back as soon as I ascertained that it was infantry." He came "as close as the skirmishers would let me; I drew their fire; * * * I had only two or three men with me; I went back and reported to General Stuart; * * * he was riding all around the field and observing." (Page 709.)

Colonel Blackford remained watching the Union column perhaps fifteen or twenty minutes upon Monroe's Hill, sometimes called Stuart's Hill, where General Stuart had posted a battery of guns under Major Frobel, who had been assigned to him from Longstreet's column;
1283 that is, from Hood's division. Major Frobel fired fifteen or twenty rounds in the direction, as he testifies, of the general line of the Manassas Gap Railroad, thereby leading one to presume that he was firing at General Porter's column. Stuart's Hill being located about *here* [designating on the map west of Hampton Cole's and east of Pageland Lane], it has been sufficiently described to the Board as not being more than eight or ten feet high. Not a very prominent point, except that when you are once upon it you can see a large extent of country, though not down *here* [designating along the line of Dawkins' Branch, between the Gainesville-Manassas road and the railroad], except, as the witness Leachman stated yesterday, and as also the witness Wheeler stated, in a clearing, which clearing was not made at that time. The witness Leachman stated that only the tops of the trees could have been seen when there was no clearing; so that General Porter's column could

not have been seen. But, as to this statement, he must be in error; for Colonel Blackford, who had, just before giving his testimony, visited the battle-field, testified that he thought the line of vision from Monroe's Hill, in the direction of Dawkins' Branch, that is, in the direction of General Porter's position, was (though Carraco's might have been seen) bounded by the trees in the neighborhood of Hampton Cole's, and this I positively assert to be the fact. The battle-field is there, and this assertion can be tested at any time that it is desired. Furthermore, Major Frobel's guns would have had to have a range of two miles, in order to have any effect upon General Porter's column. Stuart's Hill is distant two miles from the position of General Porter.

This fire must have been directed toward a ravine in the neighborhood of Cunliffe's, where rested General Reynolds' left, which was more than a mile from Stuart's Hill. And I am confirmed in this opinion by an examination of General Stuart's report, and of Major Frobel's report, as quoted here by the Recorder; for Major Frobel says:

> At 11 a. m., on Friday, I was ordered by General Hood to proceed to the right of the turnpike road and report to General Stuart. * * * General Stuart had selected a position near the Orange and Alexandria Railroad.

(Witness corrects this statement and rightly affirms that it was at the Manassas Gap Railroad.)

> The battery was brought up and immediately opened with marked effect on the column of the enemy moving to the right, which at once changed direction, moving rapidly to the left.

Does that describe Porter's force? Where is the enemy's right, as he stands there upon this paper? That is off *here* [designating]. Did General Porter come from that direction towards the right, and did he then retire toward the left? His movement was off there toward the left; and if he retired he retired *that* way, toward the right. That does not "fit" his case. From the testimony introduced, we know that General Reynolds did execute, in conjunction with General Schenck, just such a movement, because they moved up *here* [designating], and came out *here* [designating]; and they were deployed in that manner, and swung around *here* [designating] on the retreat—went back to the left; that describes Reynolds, and that is the direction in which the fire was. And there is other evidence of which I shall speak hereafter.

The Board will perceive that General Porter's column executed no such movement, but if anything, were merely deploying when they arrived. But, from the testimony introduced, we know that General Reynolds' troops did execute precisely such a movement.

> Fifteen rounds were fired, when the distance being greatly increased, I ordered Captain Bachman to cease firing.

1284 Now, these were Longstreet's guns. His report shows that they were. How did General Porter increase the distance? He laid there. But Reynolds and Schenck fell back from this position.

In his evidence Major Frobel says that General Lee came over there about the close of the firing (page 709, B. R.); that he himself remained in that position probably an hour; that there was no return to his artillery fire; that he could not see the direction of the Union attack because of the woods. There is no evidence that there was no return by General Porter's guns. On the contrary, they *did* fire, and, as General Porter says, silenced the batteries. Frobel says:

> We could see them very indistinctly indeed in the rear of the woods. It seemed as if they were advancing. After they got into the woods we could not see them at all.

Could he see away back here—back of these woods? Certainly not. Into what woods did General Porter get? He must have gone back; but this does not describe it.

Now, General Porter's troops did not advance into any woods. Their deployment was continued until a division was deployed, although they were thrown back a little into the woods. This movement is not what the witness meant by advancing. General Reynolds, however, was advancing, and was fired upon, and according to the testimony of Lieutenant Benjamin, who says there were no Union soldiers in front of him when he arrived at Groveton and took position, to wit, at twelve o'clock, General Reynolds' troops must have retreated about that time. Major Frobel in his report said that he commenced to fire about eleven, but in his evidence he says between ten and twelve. The farmer, Monroe, who was introduced by the government, and who knows the country certainly better than Major Frobel, who is not known to have visited that section since the war, says that he saw this firing, and that it was pointed in the general direction of Groveton. That this was so is further made manifest by the criticisms I have just made and by the statement of Major Frobel that the *column* was advancing, and by the statement of one of Reynolds' command to the effect that they advanced by platoons of companies. Examine, now, in this connection, General Stuart's report (page 256, B. R.), and we shall see that after firing "a few shots at the enemy's supposed position, which induced him to shift his position," he finds another force entirely distinct from the force at which those shots were fired, for he says:

General Robertson—

Who we all know was stationed on the Manassas and Sudley road immediately in Porter's front, on the right of the road, for he has testified to that here after a personal examination of the battle-field—

who, with his command, was sent to reconnoiter farther down the road toward Manassas, reported the enemy in his front. Upon repairing to that front I found that Rosser's regiment was engaged with the enemy to the left of the road and Robertson's videttes had found the enemy approaching from the direction of Bristoe toward Sudley.

This must have been General Porter's force (I shall not here enter into any discussion as to where it was approaching from; that will be remarked upon hereafter), because from the neighborhood of Robertson's videttes had come the report of Colonel Blackford, and probably also of Robertson's own force.

General Longstreet's force had come down the Gainesville turnpike, it being in evidence that Hood's division was in the advance, Kemper next, and Jones last; that Hood formed across, right and left of the turnpike, and perpendicularly to it; that General Kemper
1285 at the same time turned off from the pike, where his head of column was, and striking south obliquely, formed to the right of Hood; that Jones executed a similar movement and formed to the right of Kemper [referring to the map]. *This* represents the position of the enemy about that time. They were very thoroughly formed there, and formed immediately upon General Porter's arrival. This shows that our theory of the case, as I think, is thoroughly established by our evidence and by a close examination and criticism of the evidence by the government; though the Recorder maintains, as I understand, that General Longstreet, at 2 p. m., was formed back of Page-land Lane, not quite two miles from Gainesville, and his guns placed in this remarkable position, *down here*, running from Page-land Lane, as it crosses the War-

renton turnpike, running from that crossing up back of the Douglas house, and not coming far to the east of it at all. Now, as has been described, this land slopes up from the Page-land Lane towards the Douglas house—the general slope is that way; and the depression before you reach the Douglas house is in the shape of a valley, and is very slight. The ground gently slopes that way; *here* [designating] it comes higher. An odd position to place twenty guns, firing nowhere. Off in *this* direction [designating towards Cunliffe's], at 2 p. m., there was no cannonading. General Schenck and General Reynolds were not fired upon in that position; they did not claim that they were; yet fifteen or twenty guns were firing away with tremendous effect upon our batteries, which were replying—Benjamin's and two other batteries attached to General Schenck's division. Benjamin was located here, back of Groveton, without any doubt. The government theory is that Longstreet formed down *there*, west of Page-land Lane, which I say is rather a depression, because the whole slope is up towards the ridge which runs along *here*, as you see, culminating in the renowned Stuart's Mountain, eight or ten feet high! Now, there are two Dogan houses on this map. One Dogan house is *there* [indicating], and the other is *there* [indicating], and the testimony—but everybody can see that the cannon were placed between Longstreet and Jackson, if Longstreet was formed, as we say he was formed, through what must be known now, for the purposes of this case, as the Gibbon woods. Then, of course, the cannon stretched across the heights known as the Douglas Heights, in front of the Brower or Douglas house, towards the Union Army; and if the cannon were stationed at the point just described, then, of course, Longstreet's corps must have been prolonged through the Gibbon woods. The one is dependent upon the other. Our theory is that Longstreet was stretched on through the woods, back of Britt's down behind Hampton Cole's, and drawn back a little; one brigade, at a later hour in the day, of D. R. Jones' command being carried down the Manassas Junction road further towards Dawkins' Branch, and Robertson's cavalry being formed to the enemy's right of that road, still farther toward General Porter's position.

Now, I ask why should General Longstreet have been from a quarter before nine—his column of 14,000 men at least having marched through and left Gainesville at that time—why should he have been until two o'clock, according to the government theory, engaged in forming and remaining behind Page-land Lane, when his scouts, when his army, when Colonel Blackford were all aware of the presence of General Porter's corps, and when, as the government contend, Major Frobel was firing at them, and he knew that, according to the scale of that map, General Porter was at least two miles from him; and if he moved up to the position which they actually did occupy he would have a good position for offense or defense, instead of lying in a hollow. The witness
1286 Monroe summoned by the government, says that he saw this line formed behind his house at 11 o'clock, by the clock; but that he did not see this force after one o'clock; of course not, for it had gone forward, while the witness was occupied with something else. Just here let me remark (by way of parenthesis) that the Recorder has seen fit, in the character of a military expert, to say what movement General Porter should have taken on arriving at Dawkins' Branch, forgetting that General McDowell was in command, that he rode up immediately, and that he did not advise the seizing of Monroe's Hill, which I have asserted and still assert was invisible from that position, the seizure of which hill, as being the key to movements south of the turnpike, the Recorder

thinks was the best thing possible, and so, if General Porter had seen fit to have occupied this invisible hill, and if he arrived at Dawkins' Branch as early as 10 o'clock, Monroe's Hill being distant two miles from him, it would have taken him about an hour to have marched there, and arriving at 11 o'clock he would have found the enemy in occupation.

During a recess of this Board two witnesses, who were with General Stuart on the 29th, were examined for the government.

The Rev. John Landstreet said he arrived at Sudley between eight and nine, finding General Stuart there, wherein he was mistaken as to time, for Stuart must have been with Longstreet at that hour. He does not remember how long the time was, with reference to what he did, but at a time nearer eleven than half past ten (afterwards stating he would only swear to it as being before twelve, for he had no watch) he found himself at Hampton Cole's, and came upon General Stuart. Guns were placed upon the ridge after he arrived, and a few shots fired at a column of Union troops. He only remembered a few. General Stuart ordered brush to be dragged by Colonel Rosser's troops, and Mr. Landstreet saw, thirty minutes afterwards, clouds of dust, which he took to be those raised by this dragging of brush along the line of the railroad coming down from Gainesville. Of course the witness was mistaken as to his cause, though not as to his effect. That dust was raised by Jones' division coming down the railroad, as was testified by Major Williams, aide to General D. R. Jones (B. R., 224). They came down the railroad, having turned off the turnpike at the rear of the other two divisions; because Colonel Rosser, who testified that he saw the brush-dragging done by his own men, says it was done on the Meadowville Lane, which was to the northeast of Hampton Cole's, instead of to the southwest, as the railroad was. Certainly, if the brush was dragged, Rosser ought to have known where it was dragged. This dust is a very material affair according to the government, and it is important to know where it was. If General Porter was to attack that dust we want to know which way he had to march.

This lapse of thirty minutes after Major Frobel was brought from Longstreet's column on the Gainesville turnpike strengthens my view that the rear division of Longstreet raised this dust, because ample time would have elapsed for it to come down to a line with Monroe's Hill, and if the witness was really near Cole's and Carraco's, and the battery was horse artillery really firing on General Porter, then, how soon after General Porter arrived, not even having deployed, did General Jones' division come upon the field?

But the witness was clearly mistaken as to being at Hampton Cole's, although he said they then called it Cole's, and he remembered it because the name reminded him of Cold Harbor; he must have been, if anywhere, at Monroe's Hill, for there is no ridge at Hampton
1287 Cole's; and Carraco says that there were trees between his house and Cole's, and naturally no guns would be placed there.

The witness must have referred to Frobel's guns; though he thought they were Stuart's, still he says he does not know.

If, then, he was on Monroe's Hill, he could not see General Porter's column at all, for it was not visible from that position; and again, his testimony shows he did not, for though he had a powerful field-glass, and staid in that elevated position an hour and a half—until after twelve—he saw no deployment, no skirmishers thrown out; the troops were in columns; he saw the head of it and down the columns, perhaps an eighth of a mile, and yet did not see the side of the column. In other words, he did not see it move obliquely or at right angles with his

line of vision, but in a line with it! This could not have been, for his line of vision struck Porter's line of march obliquely, if at all. He says he could have seen skirmishers thrown out in advance of the column, but there were none; and that the troops were marching on a level.

Q. Could you have seen any deployment from the right of that column?—A. Yes; because I used a powerful field-glass all the time. I could have seen it as plain as I see you.

Q. Was this column to your right or left?—A. From the position I was in, it was almost directly in my front. I think if I had advanced in a straight line, I would have come up face to face with them. I was a little to the right of Hampton Cole's and looking right straight down.

That was not General Porter. I do not care who it was, but it was not General Porter. If General Porter was at that time in column, he was on the road where the witness could not have seen him. This description does not answer to the force of General Porter, which was deployed before any shots were fired, and which was coming down a hill before deployment; and the witness further says that the guns were pointed a little to the left of the railroad (whereas General Porter's force was, on arrival, on the witness' right of the railroad), conclusively showing that he was at Monroe's Hill, and there saw Frobel's guns trained on some of Reynolds' men. Looking in this way, if the dust he saw was actually raised by brush-dragging on the Meadowville Lane, as Rosser says, that dust would be brought to his right in a relatively similar direction that the line along the Manassas Railroad that he himself indicated would have been in if he was looking toward Dawkins' Branch.

The witness then went toward the Warrenton pike, and, striking it, went up to near Gainesville. He does not remember seeing Confederate troops to his left on his way from Hampton Cole's to the pike, but when he came back from Gainesville (I am the more particular in the criticism of these witnesses, White and Landstreet, because they are almost the only pegs upon which the government can hang its theory as to Longstreet being behind Page-land Lane), when Landstreet came back from Gainesville, he found Longstreet's command all in line back of the Page-land lane, which was in advance of where he had struck the pike, and inasmuch as he did not see as many as 5,000 men on the pike on his way to Gainesville, and it was his opinion they belonged to the rear of the column, it appears that Longstreet's whole column must have been formed in line of battle before he left Monroe's Hill (where he must have been) for Gainesville, at about half past twelve, although he did not see them till he came back from Gainesville, between two and three o'clock.

Monroe, a government witness, testified that he saw this line at eleven o'clock formed to rear of Page-land Lane (that was Hood's first position), but that afterwards, being near Frobel's guns, he could not see them for the hill; and General Wilcox also says he could not see the line
1288 of the rest of Longstreet's command, although he marched in their rear from pike to railroad, but he knew they were there; and yet Landstreet testifies:

Q. Would not any considerable body of men in line of battle have made an impression upon you?—A. No, sir; would not have made a bit of impression, unless there was something in the case to particularly strike me.

And that after being at his advanced position he was sent off after the First Virginia Cavalry, and paid little attention after that.

A still more delicious morsel of this witness' testimony shows conclusively how much his memory is worth, for the following italicized

words, left out by the stenographer by mistake, and since corrected, should have been added on page 1068, B. R., and the eighth answer on that page should read thus:

A. No, sir; I recollect that the next place where I was, was called Cole's. *It was Hampton Cole's. I associated it with Cold Harbor. Kept it in my mind and recollected it in all these long years when I did not speak of it,* &c.

This wonderful accuracy of memory is ridiculous when we learn from Mr. Leachman and his neighbors that Hampton Cole was unknown in that neighborhood until 1870, when he married and lived in his present house. The truth is, Landstreet means to tell the truth, but his bad memory won't let him.

Is this unobservant non-combatant to be believed after all his misstatements of time and position; to be believed as against General Longstreet, General Wilcox, General Early, Colonel Marshall, Major Williams, and Captains Payne and Mitchell?

Major White, of Stuart's staff, also testified, but his ideas of time are wild indeed. He started with Stuart from Sudley Springs at between eight and nine, and met Longstreet at about eleven, between Haymarket and Gainesville. None of Longstreet's corps had then passed through Gainesville. Well, what becomes of General Stuart's report? We must not rely, as we have heard, upon rebel testimony. Stuart then threw his cavalry on Longstreet's right, and moved down the railroad till they came (evidently) to Monroe's Hill; there he saw a column of the enemy advancing. This was "nearer twelve than eleven." He saw them near the Carraco house, perhaps a little beyond. Some shots were fired in the direction of Leachman's he believes.

Robertson and Rosser were engaged before the battery was placed. (N. B.—This contradicts Stuart's report.)

The Union forces, at which the firing was directed, were relatively to him in a depressed position. They were not in line of battle.

Major White then went on a message to General Jackson, and was gone an hour before he got back and found Stuart still on Monroe's Hill; and Longstreet's command had come down, and were forming westerly of Page-land Lane. Neither of these witnesses had been on the battle-field. They did not know anything about the configuration of the ground there.

Major White knew of no other position taken by Longstreet during that day; but "*don't know anything about the disposition he made of his troops*"; he thought Hood was on Longstreet's extreme right (!), and said he himself was in rear of Hood. He misses the correct location of the guns on Douglass Heights, and places them way to the rear, about north of Page-land Lane, and then drags the Union batteries all the way from Groveton down to near the word Meadowville, under Cunliffe's, down in a hollow, and makes them fire at the Confederate bat-
1289 teries of nineteen or twenty pieces! All this to accommodate them to his idea of Hood's line. The Recorder tried to help him out of the hollow afterward; but I submit that the major is still in that depression. He also, by some leading questions—duly objected to—tried to correct the witness' testimony as to the Union forces being near Carraco's, and succeeding in getting him to place them more to suit, but from him the admission was drawn as follows:

A. I never said I saw the Manassas Gap Railroad. I said I saw them on the road running parallel with the Manassas Gap Railroad. They were not marching on the railroad. They were marching on a road that I supposed, from the position I occupied, was a line parallel with the Manassas Gap Railroad. They may have been on this road [from Gainesville to Stuart's Hill] and took position there [at +²]. From that position we saw the column coming up, but they were not on the railroad.

Q. How far from the railroad do you judge they went? You saw the railroad from that position?—A. As I said from the beginning, I suppose that they were—well, I don't know—I would not say, because my opinion is not clear.

Q. Did you see the railroad in conjunction with seeing them, or at the same time in connection with seeing them?—A. I could not say. I was not looking for railroads. I was looking for troops. I don't recollect now whether I saw the railroad or not, because my attention was directed to more important matters.

The witness also says:

Q. Draw a line where the nineteen or twenty guns were posted.—A. *I had no connection with Longstreet's command or Jackson's. I passed in the rear of both lines several times with messages. I did not inspect their lines. I just speak from general recollection of their lines.*

Q. Then you do not recollect precisely where any one line was?—A. I do; yes. I have indicated there is Jackson's line. His artillery was posted on this range of hills. General Longstreet formed here. [Witness indicates the different positions.] Their lines did not join. There was an angle there, an opening, and there is where the battery of artillery was.

Being recalled, he was further examined as follows:

By Mr. MALTBY:

Q. Did you see General Longstreet's troops or General Hood's troops while they were forming in line of battle on the 29th and after they were formed?—A. I saw Hood's command after they had taken position.

Q. But not while they were forming?—A. Not while they were forming.

By the RECORDER:

Q. Did you see them before they were formed? If so, at what time?—A. When we parted with them on the pike between Haymarket and Gainesville, we took the right and moved down to this position, where we saw the column advancing. When that battery took position there and opened in that direction, I went with a message immediately to General Jackson, and passed over the ground where I saw Hood's command. Afterward, when I went on a message from Stuart to Lee, I found him on that hill in the rear of Hood's line, and delivered my message to General Lee, looking to the south of the Warrenton pike on that hill.

Q. He was not in that position when you went to General Jackson with that message?—A. No, sir; he had not taken position there then.

If the Board had seen all the hesitation of this witness they would have seen that his memory was not trustworthy, particularly as he put the fight of Hood and King at about three o'clock instead of at dusk. He also describes General Lee's headquarters as being just behind Hood's line, and describes it a good deal as Colonel Marshall does. Neither he nor Landstreet have been to the battle-field since the battle. Colonel Marshall came before you in October, having been on the field a few hours before and having recognized the very spot, tree, and brush where those headquarters were, and he says Hood's line were in front of them; and inasmuch as these headquarters were in advance of Page-land Lane, then Hood's line must have been in Gibbon's woods.

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What military critic would not laugh at the idea of the astute Longstreet or that great leader General Lee allowing his troops to remain until four o'clock in the position behind Page-land Lane, a mile to the rear of his cannon on Douglass Heights and way to the rear of any good strategic position? Formed behind the ridge of Monroe's Hill and remaining there so many hours, as is sworn by the government's own witnesses, when just a mile in advance was the most admirable military line equidistant from the alleged lines of the opposing armies.

General Lee was not a man to spend from a quarter before nine till two or half past two in the afternoon in marching 25,000 men from Gainesville to Page-land Lane and forming them there.

The Board then, at five o'clock and fifty-seven minutes, adjourned until to-morrow morning at ten o'clock.

THIRTY-NINTH DAY.

WEST POINT, *January* 4, 1879—10 a. m.

The Board met pursuant to the foregoing order and adjournment.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A., and the Recorder; also Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

Mr. MALTBY resumed his argument as follows:

[The Rosser map shown to the Board.]

Mr. MALTBY said: I show you that for the purpose of indicating where Colonel Rosser dragged brush according to his testimony [explained to the Board]. Landstreet says it was dragged down there along the railroad from Gainesville; Rosser says there along Meadowville Lane. The testimony of General Porter's skirmishers shows that the dust was coming down on three lines. So if brush was dragged on but one road and Rosser was the man who dragged it, it could not have been dragged in three lines. So it does not amount to anything after all.

Here is the Landstreet map [map exhibited to the Board]. He says that Longstreet was formed back there—L. 2 and L. 3. Those guns located up there are located by myself—a hypothetical position between the Browner house and the Independent line of the Manassas Gap Railroad, upon which to question the witness, who locates his position as being at Hampton Cole's. Carraco has testified that he could not see any troops between him and Cole's from his house. If you look at his house on the contour map, you will find that there is a little depression between his house and that place, so you could see away across; and from Hampton Cole's, if he saw General Porter, he must have seen Carraco's, which was impossible.

Now, when the Reverend Landstreet was going back to Gainesville for some purpose or other, he does not remember to have seen any troops in position on the Warrenton pike. They were not more than five thousand men who were marching.

He says when he came back he saw Longstreet's force, and Hood's force, which he knew more especially, formed in front of the posi-
1291 tion where he struck the pike; so that if he came back and found them formed there, where were they when he was going down to Gainesville? The testimony of Froebel that he came *over*, that he was sent *over*, the testimony of Blackford that Longstreet's corps was marching down on the pike all the times, hows that they must have got ahead of that point, because they came *over*, and if Landstreet went back there, he must have met Longstreet if he was on the road; and if Longstreet was not there, he was forward of the position where the Reverend Landstreet struck the pike, and must have been up in here in the Gibbon wood.

If he saw any troops formed in there when he came back, it was merely a small body of men. He testifies that he did not take any special notice of the number of men.

Now, Major White also testifies, and has marked the place where the guns were. He says he rode down from where General Lee and General Stuart had their conference on the right of the turnpike—rode down to the position here marked "W," or "+," where the guns were placed,

which are supposed to have fired at General Porter, referring to Frobel's guns. Then afterward, on cross-examination, he puts them out there at "+ 2." He says:

General Stuart threw his command on the right of Longstreet, and passed down the Manassas Gap Railroad to about that point, west of Hampton Cole's. [Point marked "W."]

He got there between eleven and twelve o'clock. Then he puts the battery [page 1058] at "+ 2." He says:

All I know is, where General Hood's command was. I was in the rear of Hood's command on the rear of Longstreet's extreme right. Hood's brigade was formed just on a ridge here [marked in ink "W 3"].

There is no ridge there.

The PRESIDENT OF THE BOARD. Does he say on Longstreet's extreme right?
Mr. MALTBY. Yes; that is what he says.

Then he is asked:

Q. Then the extreme right of Hood overtook Longstreet about in the spot marked "W 4"?—A. That is my recollection of it.

Q. You say you were on a hill that commanded views of the country in front of you?—A. We had a battery off here ["W 5"]—

Away back of the Douglas house—

that is, there was a park of artillery in position, and Longstreet's command was about that way [south].

Q. Were there any artillery in front of the position marked "W 5"?—A. Right there we had 19 or 20 pieces of artillery.

Q. Where "W 5" is?—A. Yes; between Jackson's line and Longstreet's line.

Q. Are you as positive about the position of the guns marked "W 5" as you are about the position of Hood, "W 3"?—A. Right here was where Hood was [witness indicates]; beyond the piece of woods there was a little branch running down; over on a hill was a battery of Union troops.

By the RECORDER:

Q. Do you know what these red lines stand for?—A. No, sir; I do not.

Q. These red lines are contour lines marking the heights, and these numbers, 200, 210, and so forth, mark the elevations?—A. Hood was here [W 3]; then there was a small branch.

Q. Do you know the marks which indicate branches?—A. No, sir.

Mr. MALTBY. They are black marks.

1292 A. Well, that is the branch [Young's Branch]. My recollection is there was a battery or several batteries of the Federal forces right there.

Q. At Britt's?—A. Wait a moment; it may be that piece of woods [between Britt's and Cunliffe's]—there is where they were, in there [about south of the word "Meadowville," under Cunliffe's]. There was a hill—I don't know how you mark it here—there was a hill, a very nice position for artillery—

You will notice from the contours that that is a depression, while the hill is back *there*—

There was a hill—I don't know how you mark it here—there was a hill, a very nice position for artillery, where there were several batteries that were firing off here [at W 5] in that direction—

Is there any testimony that there were several batteries up there with Schenck and Reynolds? There was but one, Cooper's battery, which they endeavored to put in position; but nothing is said about any other battery firing up there—

with Longstreet's command right in here [W 3].

Q. Did Longstreet's line curve from the position of the artillery [W. 5]?—A. I cannot answer that question. I had no connection with Longstreet's command; it was only observations in passing with messages from Stuart to Lee or Jackson.

Q. Where was Lee's position, headquarters, where he could be heard from, in reference to Longstreet's line, in front or behind it?—A. It was behind it.

Q. Can you locate on the map where General Lee's headquarters were? Describe as near as possible what his headquarters were. Were they a house?—A. No; the

times I reported to him he was in the field; he would move sometimes to one position, sometimes to another.

Q. Do you know where his general headquarters were that day?—A. No, sir.

Q. Were they to the right or left of the pike?—A. I cannot answer that question.

Q. How far behind Longstreet's front line was General Lee?—A. I found General Lee at one time just on a hill just behind General Hood's command; he was there with a glass looking off in the direction where this battery was [southeasterly towards Britt's].

Now, if General Lee was back there behind Page-land Lane, south of the turnpike, with this ridge, which is made so much of by the Recorder, between him and Britt's, how could he look off there? His vision would have to describe the circle that a mortar-shot describes when fired.

Q. Was he in an orchard at the time?—A. I don't know whether there was an orchard there at this point or not. I think there were a few scattering trees—whether it was an orchard or trees that had grown up there I could not tell; but I recollect there were several trees there.

Q. Do you know Col. Charles Marshall of General Lee's staff?—A. I do.

Q. Was he there?—A. I cannot call to mind that he was present at the time.

Q. Did you see him during the day?—A. I did; several times.

Q. Was he in a stationary position, dismounted, or riding about?—A. Riding about. Whenever I saw him he was mounted. I saw him several times during the day, at different parts of the field.

Q. Do you know whether General Lee had any permanent headquarters?—A. I do not. I did not find him at any particular locality.

Q. Do you know that he and his aides were all the day in the rear of Hood's command?—A. I do not. I only found him there once, then he was just in the rear of Hood's command in a high position; and just in the rear of him was a piece of old fields grown up with broom-sage, and a good deal of undergrowth and locust-trees—looked as if at one time there had been an old residence there, dilapidated, run down, destroyed.

1293 The Board will recollect the very recent testimony of Mr. Leachman, who has lived there fifty years, to the effect that near the place located by Colonel Marshall as the headquarters of General Lee during the day of the 29th there was formerly an old house—that position which I have marked there from my recollection of Colonel Marshall's first mark before he went on the battle-field. Subsequently, referring to the map, he has placed it there, at "L," about the highest point of that field. Now, the witness White says that this was in the rear of Hood's line. Then I suppose he put the Union troops there [designating on the map toward Gainesville], because Hood's line being back of Page-land Lane, in order to be in the rear, and the Union line in front, he must have been west instead of east. Well, that is a curious idea of geography. The fact is that this witness had not been on the field of battle, and did not understand the map properly; did not know the marks that, to any school-boy, show what a rivulet is, or a road. Yet the government must depend upon these two ignorant witnesses—ignorant in relation to this map—to place Hood back of the Page-land Lane. He never was there. The proper position for a commanding general, as was brought out from various witnesses, and as I presume I ought to know, although a civilian, is rather to the rear of his troops, and not up in their front toward the enemy.

Q. Is it customary for the commanding general to have his headquarters in advance of his line of battle?—A. No, sir.

Q. Then you do not place his headquarters at any time that day as being in advance?—A. Of course I do not.

Q. Then, if his actual headquarters were here——?—A. [Interrupting]. I never said so.

Q. If his actual headquarters were about in the position marked P, would the position of Hood be in the position you have assigned it or in advance of the letter P—

You will notice that I marked "P" there, which was what I then understood to be the position—

that being on the edge of a hill as you see by the map, Cunliffe's being in a depression—where would you put the line of General Hood?—A. General Hood's line was just *here*. [Witness indicates.]

Q. Suppose Lee's headquarters were where the letter P is, where would the line of General Hood be on this map?—A. I never said that General Lee's headquarters were there [at the point marked P].

Q. Where were you when you heard musketry firing on your left, on Jackson's front, on the 29th?—A. I cannot call to mind.

Q. How long after you came back from General Jackson—you put that at twelve?—A. No, sir; it was later than that.

Q. What time do you put it that you came back from General Jackson after being sent over by General Stuart?—A. Half past two or three o'clock.

That shows his idea of the fighting with King's command, which occurred about six or half past six o'clock or dusk. On page 1063 he says:

Answer. The cavalry were around on the right. Hood was right in there [W^3]; and three and a half or three o'clock, to the best of my recollection, is the time I heard this sharp fighting in Hood's front. From the position he occupied I supposed it was his front, because we were just to his right.

The Recorder helps him out in this way, or endeavors to, but I think he still sticks there in the hollow:

By the RECORDER:

Question. Assuming Hood's division to be in the place you have indicated by W^3, and suppose there had been a battery placed on this rise of ground, marked C—

1294 It is to be noticed that the Recorder says, "and suppose there had been a battery." Now, the witness said, "several batteries"; which correspond to the three Union batteries at Groveton, while a "battery" corresponds to Cooper's battery—

placed on this rise of ground, marked C, would that have fulfilled what you understood was the position of a battery firing off in the direction of "W^5"?

A. Yes; just beyond a small branch there was a hill, a very fine position for artillery, and it was firing off in the direction of "W^5." The highest ground of that hill is where that battery was placed, or rather a park of artillery—

"The highest ground of that hill." There is no "highest ground of that hill" off there; it is a hollow—

19 or 20 of our guns were in that position.

Q. Suppose that the column of troops that you saw on that morning, or on the noon of Friday, August 29, had been coming up the dirt road from Manassas Junction to Gainesville, and was in the neighborhood of Dawkins' Run, would that have been the position of the column that you saw, according to the map?

(Objected to as leading.)

A. The troops that we saw approaching came more from the direction of Bristoe than from Manassas.

Q. Therefore what road indicated on this map best fulfills the direction from which you saw those troops coming?

(Objected to as leading.)

This is on the redirect.

A. They were approaching more in the direction from Bristoe than from Manassas.

Q. Therefore what road best of the roads you see on this map shows the direction from which you saw those troops coming? [Map explained to the witness.] Now where were the Federal troops?—A. I remarked a while ago that the column that was advancing advanced more from the direction of Bristoe than Manassas.

Q. *Here* is *Bristoe* and *there is* Manassas. Now where do you put it, what direction? Make a line indicating the direction.—A. They must have come in *here* or in *here*.

Q. Then you are not positive that you saw them on the Manassas Gap Railroad?—A. I never said I saw the Manassas Gap Railroad. I said I saw them on the road running parallel with the Manassas Gap Railroad. They were not marching on the railroad. They were marching on a road that I supposed, from the position I occupied, was a line parallel with the Manassas Gap Railroad; they may have been on this road [from

Gainesville to Stuart's Hill] and took position there [at + ²]. From that position we saw the column coming up, but they were not on the railroad.

Q. How far from the railroad do you judge they went—you saw the railroad from that position?—A. As I said from the beginning, I suppose that they were—well, I don't know—I would not say, because my opinion is not clear.

Q. Did you see the railroad in conjunction with seeing them, or at the same time in connection with seeing them?—A. I could not say. I was not looking for railroads. I was looking for troops. I don't recollect now whether I saw the railroad or not.

I just want to show how the witness was bolstered. I asked him on the recross:

Q. Where were these eighteen or twenty guns of Jackson's?—A. That did not have reference to Jackson's command; Jackson's artillery was posted on this range of hills back of his line of battle. This park of artillery is where W⁵ is and W⁶.

Q. You still say that Hood occupied that position, and that his right was where + and + + are?—A. There is where Hood was; right there.

There is not any getting around that. The witness is stuck right in that morass, and the government keeps him there.

Why should the aged Carraco be brought here? He was a farmer living between General Porter's lines and General Longstreet's
1295 lines. His house commanded no view of the road between him and Cole's from the lower windows because of the trees, and from the second story because there were no windows looking that way. He could therefore see no Confederate troops.

While at his house he spent most of his time at a window in the gable and looking almost due south towards Dawkins' Branch. When he took his family out of danger, following the railroad, which is alternately shut in along there by banks and trees, he saw no troops, because they were mostly in the woods. His ideas of time agree with no other witness, and fright must have made minutes seem hours to him. He says that the artillery did not come about his house until in the afternoon, if I recollect aright, about three o'clock. You will notice that General Rosser has marked on his map the direction in which some horse artillery was sent, and he says they were early sent off in the direction of "K" and an arrow, or about the time of the brush-dragging. So the aged Carraco is good for nothing.

The Rev. Franklin Stringfellow says for the government that Longstreet's line, after forming, moved forward toward Lewis' Lane.

Having disposed, I think conclusively, of these witnesses, I shall be obliged now to direct my attention to the dust which Rosser swears he raised by having a hundred cavalry drag brush along the Meadowville Lane, for, at first, he says five or six hours, and afterwards, on cross-examination, admitted it to be only from ten to one o'clock that he dragged it. How is he more certain about "ten to one o'clock" than he is about "five or six hours"?

Of this exploit I have to say that it was a piece of fantastic nonsense, and has done no evil except to blind the eyes of those who rely upon it to convict General Porter, or rather to justify the conviction against which he is now pleading.

If, as the Recorder contends, Monroe's Hill was in sight of General Porter's column, then Stuart caught sight of him and had guns upon that hill, firing upon him before more than an eighth of a mile of his column was visible. At that time Longstreet was, even if on the pike, only two-thirds of a mile from Monroe's Hill, and General Porter was two miles. While Stuart and his aids had powerful field-glasses, could Porter have carried the position before Longstreet could have been summoned? Or could General Porter have formed his line and marched two miles before the whole of Longstreet's force would have

come down into line and swept in front of Monroe's Hill, as it actually did?

No! Longstreet's column had come through Gainesville—14,000 of them—before nine o'clock, and the rest must have been right on their heels.

The head of that column must have been at least partly formed at Pageland Lane by nine o'clock. But no one claims that General Porter left Manassas Junction before nine o'clock (he really left about ten o'clock), and he had five miles to march, and during the time occupied by that march General Longstreet must have had his line all formed.

If this calculation is not true then its premises are not true, and the Recorder must deny that Buford's dispatch contains the truth or make General Porter leave Manassas Station before those three dispatches were written to and from his officers concerning ammunition.

If Stuart's ruse was practiced with reference to General Porter's corps it was foolish, for it was calculated to prevent his incautious advance upon a strong concealed army in strong position.

1296 It is quite immaterial to us whether this brush-dragging is believed to be true or not.

General Longstreet's troops were there. No need for pretense. And when General Lee's report was made up this vaunted ruse was wisely left out of it.

Let me now look at the evidence introduced on this point by the petitioner, taken perhaps in connection with reports introduced by the Recorder.

Major Williams, aide to General D. R. Jones, says that they began to march from Thoroughfare Gap at sunrise; Hood and Evans in front, Kemper next, and D. R. Jones, and that after marching as rapidly as they could, for they were pressed, they arrived at Gainesville he suppposes not later than nine to half past.

A. Hood's and Kemper's divisions were brought through the gap on the night of the 28th. Jones's division went through before that fight there, but after the fight ceased Hood and Kemper were brought through for the purpose of making a night attack on General Ricketts; Hood was thrown forward for the purpose of inaugurating that attack, and found that he had already retired. Hood lay on his arms in that field.

Q. Did Hood move through the gap that night?—A. Yes, sir.

This corresponds to the statement of General Buford; Kemper had been preceded by two divisions, which represented Buford's seventeen regiments, and then Buford, leaving that vicinity, did not report Kemper's and Wilcox's divisions coming afterwards. (The place was too warm for him.)

Major Williams states that D. R. Jones was in position by twelve across the railroad, just by Hampton Cole's house. At that time he, with General Jones, took Drayton's brigade with a battery to be eastward of Vessel's on the Manassas Road, and posted them in the woods.

In this position they remained all day.

On cross-examination he said that Jones' division was in his final position before eleven, except Drayton's brigade, which was posted at twelve, and his skirmishers thrown out.

He also describes, as follows, the deployment of Longstreet's column from the turnpike:

General Cadmus M. Wilcox commanded three brigades, or one division of nearly 5,500 men, in excellent condition. They marched through Hopeville Gap and camped east of it by ten o'clock the night of the 28th. I desire to say that the Recorder has seized upon one expression

used in Longstreet's report, and will probably dwell upon it, as to Longstreet's troops being jaded. But the evidence shows that their marches had been so short that they could not have been jaded in the sense of fatigue. They may have been dusty. Leaving that gap at sunrise next morning, he marched till he came to the road leading from Thoroughfare Gap, down which the main body of troops was passing toward Gainesville, and he fell in the rear and followed on, arriving at the little stream Young's Branch. Crossing the turnpike near Pageland Lane, he halted.

He had been on the battle-field to refresh his recollection, and fixed upon this stream while there. After being there three-quarters of an hour or more, he moved up to Gibbon's battle-field of the 28th, where he saw some Federal dead. I think it was General Wilcox who locates that as being a damp place, where the wounded of the night before had been carried in order that they might be where it was cool.

This was about two o'clock; and about half past four he was moved over to near the Manassas Railroad, about 100 yards to Jones' rear; but the formation of the country prevented him seeing the forces in
1297 his front, south of the pike. He remained there till sunset, when he withdrew to the pike; and, arriving just after Hood's engagement, he advanced to Groveton in the darkness, and fell back again late in the night. While on the railroad he thought that he outlapped the force said to be coming against him, which, he understood, was coming in the direction of Manassas.

Captain Mitchel, under Kemper, says he commenced to march at about six o'clock, or half past six, and marched through Thoroughfare Gap, through Gainesville, to about Pageland Lane, as far as he can fix it. turned off, marched through fields and woods to his position, to right and front of Jones' division, passing a regiment or two of the latter; got into position nearer eleven than twelve, and then moved to the left after two hours.

The Recorder may seize upon this witness's chronology, but it will avail him naught. The Buford dispatch is the Procrustean bed to which every bit of chronology must be fitted. If it does not fit, we do not rest upon it.

The rising ground of which the witness speaks as being in front of him was the country across Dawkins' Branch, running up to the high ridge of Mount Pone to the east. Nobody would think of Monroe's Hill as anything very striking. It is not 10 feet high from the road in its rear. That was written before I had inspected it. I will say not more than 14 feet, if that is more satisfactory.

General Jubal A. Early, of Jackson's command, a government witness, was posted on high ground to the north of the Warrenton Pike, and some distance west of the Douglass Heights. About eleven o'clock—perhaps a little before, or a little after, and from that position—he saw Longstreet's column advancing a brigade in line of battle, and skirmishers thrown out, advancing near Pageland Lane. He communicated with it, and found it was Hood's division coming up. He did not look at his watch, but he knows it was forenoon. Hood passed on, followed by other masses of troops, until General Early went over to the rear of A. P. Hill, away to the north, a sufficient force having come up by twelve at farthest to render it entirely unnecessary for him to remain. He said that Longstreet's movements and Jackson's movements were concealed even from each other by woods, and that he could not undertake to say that his recollection as to hours was precise. That is a very woody

country. There might have been any number of movements of troops without their own troops knowing it.

Colonel Blackford, the government witness, of whom I have spoken heretofore, doubtless saw General Porter's advance, and thereupon made his report to General Stuart, and shortly after this report the Confederate infantry came down to Hampton Cole's. Colonel Blackford has been on the field recently, and knows the ground.

He says that he thinks Longstreet's first line was in woods, west of Pageland Lane, but does not know exactly. That he supposed a division had passed on beyond where Lee and Stuart stopped on the pike, before Stuart came down toward Monroe's Hill.

General Longstreet testified that his column arrived within supporting distance by ten o'clock. It must not be supposed that this was supporting distance in reference to Gainesville, because he had previously testified that he arrived at nine o'clock. So that he could march across the country, if need be. This means *near* supporting distance.

He came through the gap about sunrise, and marched seven miles, as he estimated the distance to Gainesville. After hearing the cannonading the troops marched at the rate of three miles an hour. This
1298 was about eight o'clock. He came within supporting distance about ten o'clock, and began to deploy, and in an hour was deployed. He heard of General Porter's advance about two o'clock, thus showing that some time had elapsed after the formation of his line before he heard of General Porter's arrival. I am not depending upon precise hours stated by any witness, unless it was by a watch. But it shows the lapse of time generally.

General Longstreet made a personal reconnaissance between eleven and twelve o'clock, and went into the Leachman house between eleven and twelve o'clock. That shows that there were no Union troops between the Leachman house and his troops at that time, or about that time. Clearly, in his mind, taking the sequence of events, that was before he knew of General Porter's advance.

He thinks that Wilcox was taken over to the railroad about two o'clock. He says his troops were not jaded, and Captain Payne's evidence shows that they could not have been, having had so much rest prior to their march of that day. They had only marched three or four miles the day previous.

He testified to General Lee's desire to attack, and his own desire not to do so before and after his reconnaissance in the neighborhood of Leachman's.

He testified as to the line formed by his troops to the right of Jackson, placing this line as it crossed the turnpike a little in the rear of where Colonel Marshall places it, but the contour of the ground bears out Colonel Marshall, who has visited the battlefield since the map before the Board was made, and since both he and Longstreet have testified, and has made corrections of his former testimony from personal observation, locating General Lee's headquarters and Hood's line with reference to it. Now I wish to say about this location of General Lee's headquarters that there can be no mistake by any witness who has any memory whatsoever of that position. It is the only position that can answer at all to his description given before you without personal observation on the field. There is no mistaking it; it is quite a high hill, and trees up there which he could climb. It is the only place in that vicinity in which he could look over towards Britts'. If he had been behind Pageland Lane it would have been impossible, for this hill would have interfered with his sight.

I think that Colonel Marshall shows that he was a man with a great deal of power of observation.

Concerning General Porter's force, the gist of his evidence was that its presence delayed an attack by his force in the direction of the Chinn house until it was too late to do it that day. And he did do so next day.

The action of the 30th was brought on by an advance against General Jackson (of course this was General Porter's advance).

Q. We will now suppose that General Porter's force, amounting to about 9,000 men, had advanced upon that road up to the stream called Dawkins' Branch; and we will assume, also, that the piece of wood depicted there on the right to the northeast of that road was practically impenetrable with a force like that; now will you please state whether it would have been practicable for General Porter to have transferred his forces in your front, outside of that wood, up to join the Federal forces at Groveton; I mean in the open country in front of you?

I should like to ask the Recorder if he means to use any map made in this style upon his argument (holding up a map).

The RECORDER. In my judgment that is not a proper question.

Mr. MALTBY. Being the only one of the counsel who has individually been on the field, and not having an opportunity to reply to the Recorder, I thought it was eminently proper, if it is to be used, that I should
1299 have the opportunity of criticism. If the Recorder does not state that he will use it I take it for granted that he abandons it.

The RECORDER. You must take nothing for granted. Three counsel, each to speak against one, is a sufficient answer to what you say.

Mr. MALTBY. I will therefore comment upon General Warren's map. Map-making is called a science. I suppose that the way to indicate a road of no particular importance is to draw a light line. For instance, a wood-road or path or saddle-path through a dense woods would be drawn with a lighter line than a turnpike road that had been traveled twenty-five or thirty years. If *I* were drawing a map *I* would not draw through woods roads that look like boulevards. *I* would not draw a map, if *I* were counsel for a person who was in command that day, or anybody representing him, that would show very plain, broad paths like the Bowery in New York, for instance, over which he might go and place his troops on the left of anybody. *I* wouldn't seek to bring him into any disrepute by having any such plain paths, but *I* would make them accord with the facts, and *I* would draw lines through woods that were slight in comparison with lines that represented railroads, county roads, and long-traveled turnpikes. If *I* had an army road to delineate in front of any troops, leading to their right, which it was claimed they were to travel over, an army road when there had not been any army there for any length of time, except on a march of the night before, *I* wouldn't draw a beautiful boulevard of great width in front, *I* would indicate it by some slight line. If *I* had to draw a mountain 14 feet high, *I* wouldn't put it down as Mount Blanc. Maps *may* be drawn to suit the case. *I* think I would draw the maps to represent the face of the country. General Warren, being on the spot, has drawn roads that he *saw*; *he* represented the roads as they were, as they appeared. And I have to remark that if there was any road, I do not care how broad, whether it was paved with asphalt or cobblestone, or whether a mere wagon-track, in front of General Porter, leading from the neighborhood of Deat's, over to where Lewis Lane runs into the old Warrenton, Alexandria, and Washington road—I say it makes no difference what road was there, it is just as impossible to march over asphalt as it is over a field in front of a line of the enemy. I think if *I* were to locate any cannon in position, *I* would not put them in a morass. That is all upon that point.

Now, Longstreet says about this reference to moving on any boulevard in his front:

* * * Will you please state whether it would have been practicable for General Porter to have transferred his forces in your front, outside of that wood, up to join the Federal forces at Groveton. I mean in the open country in front of you?—A. It strikes me as a very hazardous move, one that could hardly be regarded as practicable under the circumstances.

Q. Will you explain why not?—A. General Lee was very anxious for me to bring on a battle; of course I was anxious to meet his wishes, and any little circumstance that might have occurred to give me an opportunity to act I should have seized, as I did on the following day, and should have pushed it with all the vigor and force that we had, in the same way; I think that would have given us an opening; I think we would have seized it the very moment it occurred; it strikes me as a very hazardous move on that account.

Q. How would his forces have fared making that movement in front of your lines?—A. Well, I think we should have broken it up, and we should have thrown everything that we had right in pursuit.

We were not asking General Longstreet this question because he was a Confederate, but because he was a soldier educated at West Point, present on the spot and familiar with the position; a soldier who
1300 bore in his mind all the circumstances, necessarily, which would attend an attack by himself or a resistance on his part.

We had a good strong force of excellent troops, very anxious to get in and meet the wishes of General Lee and bring on a battle; it strikes me that would have given us a good opportunity, and we should have pushed it with all the vigor that was in us; I think our force was strong enough to have broken that up.

Q. Then, do I understand you that the presence of General Porter, where he was that day, held your force where it was, and prevented an attack being made by it?—A. I don't know that it held us exactly, but it delayed us until the time passed for it; if we had had more time, I don't know but we might have made the attack.

Q. But for that day it held you?—A. I think it checked our movement, retarded it so as to keep us there until it was too late; if we had had three or four more hours daylight, I think it very probable we would have gone in anyhow.

Q. Did you, in 1866, when this matter was called to your attention, write that if General Porter had attacked any time after twelve o'clock, it seemed to you that you would surely have destroyed his army?—A. I think I wrote that way.

Q. Is that your opinion now?—A. Yes, sir.

Q. You added, "that is, if you had attacked with less than 25,000 men;" is that your present opinion?—A. Yes; I have never seen any reason to change my mind about it; I think the same result would have followed if the attack was brought on the 29th instead of the 30th with greater advantages to our side, because it occurred to me at the time that the Federal line was more extended and disjointed on the 29th than on the 30th; therefore I think the advantages would have been on our side in case the battle had been brouhgt on the 29th instead of the 30th; it is a mere matter of conjecture, however.

My remarks in reference to General Longstreet apply equally well to General Robertson, a soldier educated at this institution, who, as commander of a cavalry brigade, rode from Sudley Springs, between six and seven in the morning, and joined General Lee about between eight and half past eight, just west of Gainesville, when one-half of the column had already passed. General Robertson then rode forward with his whole brigade, and after assisting in placing some troops and batteries in position, he took his place in the woods, on the extreme right of General Lee's army, southeast of Vessel's, near the Manassas-Gainesville road. His brigade remained there all day; he joined them about twelve, and the general line was formed about half past eleven.

His artillery (he thinks it was) fired from near the Carraco house after his brigade was placed in position.

His brigade outflanked General Porter, and he described the line of Longstreet's command pretty much as other witnesses have done.

General Robertson says in response to the following:

Q. Suppose the Federal forces to have consisted of 10,000 troops, and that they had advanced over Dawkins' Branch and made an attack upon your forces at any time from

the very first arrival, what, in your judgment, would have been the result?—A. I think we could have repulsed them; 25,000 men, that is what we had.

Q. Suppose they had attempted, with that force, to pass up to the right in front of the woods, and over the Dawkins Branch to make connection with the other Federal troops up in the neighborhood of Groveton, what, in your judgment, would have been the result of such a movement as that?—A. I think it would have been perfectly ruinous to do that.

It must be remembered that this boulevard, if a boulevard is sought to be established, is only testified to by Brooks; he said there was a road there.

Q. Ruinous to them?—A. No, sir; to the troops passing over that table-land. From the position that the Federal troops held at that time, to go to the right and effect
1301 a junction with General Reynolds, if I understand where he was, they had to pass over a table-land in front of artillery, in front of our troops. I think if it had been made, with no roads to facilitate the movement, that it would have been a very disastrous one; I think the result would have been fatal to them.

Q. What would have been the effect of an attack by such a force in that position as to compel General Lee to withdraw the troops from in front of Pope's force?—A. We didn't need any re-enforcements for 10,000 men; we had more than twice as many without drawing any from Jackson.

Q. You think it would not have enforced the withdrawal of any troops from in front of Pope?—A. None at all.

Q. In 1870, did you express an opinion, in writing, that at any time after twelve o'clock on the 29th, an attack of a force on the Manassas and Gainesville road with 10,000 men would have been utterly disastrous to that Federal force?—A. Yes; I wrote a letter from Louisville, I think, to that effect.

Q. Is that still your opinion?—A. Yes, sir.

Lieutenant Payne, of the Black Horse Cavalry, testifies showing the short marches made by General Longstreet's force before its arrival at Thoroughfare Gap, and testifies as to his march down to Warrenton Pike and arrival in the neighborhood of Groveton; that he rode forward with General Lee ahead of the column into a position on the pike from which he looked down into Groveton. (This spot could only have been just by the woody fringe between Groveton and the Gibbon wood.) And that some shots of skirmishers coming in that direction, General Lee ordered him to take his troop of cavalry to the rear, which he did, placing them in some woods to the rear of Gibbon's woods, and there he remained all day. The line was formed subsequently in front of him. It will be observed that we called in the testimony of Leachman to support this map, made by an engineer on the spot, to show that the only point from which Groveton can be seen is the fringe of woods between what we now know as the Gibbon wood and Groveton, about a quarter of a mile from Groveton, judging by the scale. It is a high point there with a precipitous rise and descent—the descent more precipitous in going to Groveton than the rise. So that General Lee as soon as he got on the ground before his troops were formed, reached that fringe of woods. Could he have gone through Reynolds' force to get there? Could he have gone through Schenck's force to get there?

We come now, finally, to Colonel Marshall, of General Lee's staff, who probably knows, better than any living person, the exact position of General Lee's headquarters, of Hood's line, and of Kemper's line, as it corresponds to that. His was the duty of preparing General Lee's reports; in doing which he examined all the minor reports of subordinate officers, and where any point was in doubt, he was accustomed to correspond with these various officers, endeavoring to reconcile any difference that might exist in their reports. It is remarkable that in the composition of General Lee's report for this particular day no mention whatsoever is made of General Stuart's dragging of brush, left out because it was either unknown, incredible, or useless. Colonel Marshall, as has been before stated, gave his evidence before the Board in July;

but some points being in doubt in his mind on looking at the map, he determined to make a personal visit to the field of battle and locate the positions upon the ground. This he did last October, with the great care which it is evident is his characteristic, and as a result he has drawn the positions on the map presented to you in evidence, and I submit that these positions are probably nearer correct than any others. General Lee's headquarters being early in the day just west of the Meadowville road, near the turnpike, Hood's line naturally must have been in front of it. Colonel Marshall located the position of the tree up
1302 which he climbed to obtain a clear view, and identified even the bush that grew beside it. Briefly described, the line marked by Colonel Marshall is first of all Hood's line through Gibbon's wood, diagonal to the pike, skirmishers thrown out in front even to the fringe of woods. Kemper's line running down from Gibbon's wood back to Britt's, and so on, Jones' line bending around to the right by Hampton Cole's, though he is not so certain about the location of the last line, but knows that their right was refused. The witness is positive that he overtook General Lee's line between 9 and 10, and that Hood's line occupied Gibbon's wood at 11 o'clock in the morning.

He said:

The first point I sought was the point occupied by General Lee during the day as his headquarters, where he could be found, on the right of where I was myself during a good deal of the day. Just at this point here, coming out on the turnpike road you go up quite an abrupt ascent, and pass along around in front of these woods, and just here, about this point, which is about the highest point (in front of Pageland Lane), is a tree. I found a tree that I was up that day, that I spoke of in my testimony at West Point. I found the identical tree, and identified it by a thorn bush near it, under which, after I had been up in the tree, I had a conversation with a relative of mine on Jackson's escort, when Jackson came over to meet me. I identified the spot exactly. That point is not quite as far from the turnpike as this Cundiffe house; looking from this tree down in this direction, the Cundiffe house is slightly farther from the turnpike than this position. I have indicated it merely by this spot marked "L." It is a commanding spot, and from that, looking up in this direction (witness indicates) you can see very plainly the hill upon which the artillery was posted—

Not a morass—

and I recollect when at the tree I could see the guns when they were in action on this hill along this range where the Washington Artillery was the first day, and Lee's artillery were the second.

Now, from the evidence brought before you, would Lee's artillery on the 30th be located back by Pageland Lane? Porter's command was cut all to pieces by them when his charge was up near the present monument. Now, how guns from Pageland Lane could hit General Porter with any degree of accuracy I leave the Recorder to answer.

It is in front of the Douglas house. The guns were in front of the Douglas house. Looking from here, we looked a little in the direction of the north in front of what I supposed to be the Douglas house. That was pointed out as the house where General Early had his headquarters, and it was along on this ridge that those guns were.

Colonel Marshall's description of Lee's headquarters tallies with Major White's description of a place where he found General Lee. An old house used to stand near where Colonel Marshall has stated the headquarters to have been. Major White testified:

Q. Where was Lee's position, headquarters, where he could be heard from, in reference to Longstreet's line; in front or behind it?—A. It was behind it.

* * * * * * *

Q. How far behind Longstreet's front line was General Lee?—A. I found General Lee at one time just on a hill, just behind General Hood, when I went with a message to him—just behind General Hood's command. He was there with a glass looking off in the direction where this battery was (southeasterly towards Britt's).

* * * * * * *

Q. Do you know that he and his aides were all the day in the rear of Hood's command?—A. I do not. I only found him there once; then he was just in the rear of Hood's command in a high position; and just in the rear of him was a piece of old fields, grown up with broom-sage, and a good deal of undergrowth and locust trees; looked as if at one time there had been an old residence there—dilapidated, run down, destroyed.

1303 Colonel Marshall further testified:

Then another point that I recollect and was able to identify: Passing along the Warrenton pike to the east towards Groveton, soon after we came on the ground, or rather soon after I got up, for I did not come on the ground the same time General Lee did——

Q. State the day.—A. The 29th. We rode up to the edge of these woods overlooking Groveton—

You will see them indicated by a red spot just in that fringe which I have described—

from this point you look right down to the edge of the woods, down towards Groveton. Groveton is a very short distance beyond, and entirely visible. I recollect going up there (point marked on the map with a red cross); that was while some of the troops had moved into position. We passed Hood's troops that were up in position in these woods, and we rode as far as that house is. The skirmish line was along in this narrow skirt of woods. We went up there, I recollect. From that point the ground falls away. You can see Groveton very distinctly. You can see over in this direction, and in this direction, after you get through these woods [witness indicates]. Then I identified another position. When we first went to this position [L] after we had been up here [to the cross], we came back along this road, and went back to this place again. I do not think any of the staff was with General Lee at the time but myself. There were some orderlies and myself. The others were absent on some other duty. I went up in this tree with a glass, and was looking to see what I could see. I looked across in this direction [the witness indicates]. The line of sight would pass a little to the north of the Britt house, between the Britt house and what is now marked on the map as the Leachman house. Looking across from there, I saw in the edge of this timber, the lower edge, along by these woods, which I will indicate as "D"—along by the lower edge of that I could see this field at, I suppose, a distance of about a hundred yards. Higher up than that I could not see it, because the view was intercepted by these woods. In the edge of the woods I saw some mounted men and some dismounted men. I could see some horses. General Lee was standing at the foot of the tree at the time, and asked me to try to make out what kind of a force it was, whether I could see any artillery. I was not able to make it out. The men were in the edge of the woods. On Saturday, when I came down to the Britt house, this field was entirely plain. From there you can see the Britt house very distinctly.

Thus it will be seen that the preponderance of the testimony of Confederate soldiers is strongly on the side of the petitioner, and that if they are to be believed General Longstreet's line was formed at eleven o'clock. It is true, as I suppose in all armies, there may have been detachments of that body moving about to the rear, changing their positions, and so on, until they were formed; but they were mainly formed at eleven o'clock.

To oppose this idea of early arrival, the Recorder introduces the testimony of General Schenck, of Captain Barnes, and others, who were to the South of Groveton, near that hamlet. General Schenck is positive that he reached the Gibbon's wood, which was the point of his farthest advance that day, that he remained there, seeing nothing of the enemy for two or three hours, and retired from there between one and three o'clock. That shows how indefinite his ideas of time were. That he then fell back to the narrow strip of woods next toward Groveton, and remained there several hours, and that he saw no enemy in his front in the Gibbon's wood that day. He did not see any in front at all.

After reaching the Lewis Lane wood he could not possibly have seen any enemy in his front because of a hill crowned with a fringe of woods parallel with his lines. That is that little fringe that I have indicated.

But General Schenck could not remember his position when Stahel's

brigade returned after being sent away to the aid of Milroy to his right' nor when Benjamin's battery was placed in position, nor exactly where that position was; he placing it on the north of the turnpike, while Benjamin, who has been on the battle-field recently, locates his battery to the south of the pike and east of Groveton.

General Schenck speaks of placing Benjamin's battery, but
1304 thinks his own troops were a half mile west of that battery. But Lieutenant Benjamin says that this was not so, as will appear, and Stahel's report says:

During these proceedings one of General Stevens' batteries and two regiments were placed *behind* Groveton's farm to operate against the enemy's batteries. * * * I received orders from General Schenck to take my brigade through a small defile to the left of the turnpike on the left of Groveton's farm, taking position on the borders of the woods, resting my right wing on the turnpike, and the second brigade joining on the left—

The second brigade being McLean, so General Schenck must have been with them. He was not in advance of his troops—

* * * the skirmishers in front of the brigade on a small hill and in Groveton's farm. The enemy kept up a lively artillery fire upon *General Stevens' battery, planted on our right wing about 200 paces to the rear*—

Now, if they were on the right wing 200 paces to the rear, General Schenck could not have been back in the Gibbon wood at that time. But he was back in the Lewis Lane woods, to the east of Lewis Lane woods—Lewis Lane coming in right at Groveton.—

and also upon the woods occupied by us, while the enemy's skirmishers, trying to advance on the road, were warmly received by ours, and as they threw themselves in stronger force against the skirmishers of the Eighth Regiment—

Now, this firing of the batteries upon General Stevens' battery planted upon our right wing, about 200 paces to the rear: Could they have been in that morass indicated by Major White? Could they have fired over Gibbon's woods, over the fringe of woods, and quite a high hill? Colonel Marshall says they did not. He says they were on Douglass Heights. And I think they were—

they were received on top of the hill by a volley of the Eighth Regiment; whereupon they fell back and ceased firing. As the right wing seemed to have retreated, the brigade received the order at about four o'clock to move back slowly on the left of the road, and to take position on the chain of hills to the left of Dogan's farm. Having been here but a short time, I received further orders to encamp behind Dogan's farm; in consequence thereof I marched there, crossing Young's Branch and the turnpike, took camp behind the second brigade, where we remained over night.

General Schenck says he encamped to the south of the turnpike that night: that his troops camped there for that night. This report, written about that time, says they camped on the north of the pike. Which shows his memory as to positions is not good.

Thus is shown that Benjamin was in position to the right, and 200 paces to the rear of Schenck's line, which was then in the woods to the rear of Lewis Lane No. 1, and that Schenck was wrong as to seeing no skirmishers and as to resting in the fringe of woods several hours after leaving Gibbon's woods, so that his evidence as to the impossibility of the enemy's line being in Gibbon's woods is worthless.

Lieutenant Benjamin's evidence for the government as to this matter I read, because it entirely refutes General Schenck's ideas of time, positions, skirmishers, &c.

He commanded the battery spoken of in Stahel's report as General Stevens' battery.

He places himself about half past twelve on a ridge 200 paces from Groveton to the southeast (just where Stahel puts him), and he staid

there over 3 hours until 4 o'clock. Let me refresh the memories of the Board as to that position. It is right *there*, indicated as a high point. He placed himself right *there*. Colonel Stahel says Benjamin was about 200 yards in rear of his own right. Now, then, observe what I am going to read of Benjamin and see if he went off half a mile or so from the pike, and see if he was located there with General Schenck,
1305 and see if that corresponds with Schenck's idea that he was in the Gibbon's woods.

A. General Schenck took me down to the left of the Warrenton Pike and proposed that I should go in position about half a mile, so near as I can recollect, from the pike. Some of our stragglers had come out of the wood in front to the westward. I asked him if he held that wood, and he said no; and I said if I went down to this position the enemy's skirmishers would fire through my flank, and I wanted to have the wood held. There is a ridge there in front, and there was nothing, as far as I could see, on the ridge; off to the right where it came in there were a number of batteries upon the ridge.

Now, he says these batteries were upon a ridge, not a morass. When I say "morass" I do not mean a swamp, but low ground.

We then went back up to very near the pike—the corner of the wood which makes a little break there, a little to the east of Groveton—then sent for a couple of orderlies to see if they could communicate with General Porter. The orderlies went off a little distance, and I heard a few shots fired, and I saw what I supposed to be some men galloping back. At the place where these shots were fired, or near there, I did not see smoke; two or three men rode out who were apparently the enemy. *Soon after that a line of skirmishers came out over to our right on the enemy's left;* they were mainly to our right *and on the Warrenton Pike;* some one said they were our skirmishers; *I replied they were the enemy's, and in a moment they fired at our command.* At that moment I saw my battery had been moved up, and the head of it was right by the house—what I have since learned to be Groveton. *The enemy's skirmish line was then coming in among those houses.* Of course, I went to my battery and got it on the road and brought it back and put it in position on the ridge, just this side of Groveton, about 200 yards from the house.

That answers to that position exactly. Now, Lieutenant Benjamin was a government witness, entirely unknown to us. He was brought here by the Recorder.

Then the enemy's skirmish line came in an orchard about Groveton; but I do not recollect seeing them there in the open ground to our left.

His left as he was passing *here* would be that open ground. The orchard is right there.

They fired out of the orchard some little time until some of our infantry were sent in to drive them out of the orchard, and got possession of it. Soon after that the enemy opened fire upon me; they lay on a ridge. I did not see any of their men to the left of the pike; but on the right, according to my recollection, there were eighteen guns, ranging from 1,000 to 1,100 yards, about 1,500 yards from me.

I suppose that a commander of a battery knows about how far he has to fire. I believe he has to cut his fuse for a shell. So that his testimony is valuable as to distance. Now, here is a map marked by Stevens. *There* is where he places the guns, and himself, and Schenck's line.

Captain Stevens (since mustered out as brevet brigadier-general), also a witness for the government, testified:

The brigade that we accompanied was posted in here at Groveton on the left of the road in support of Lieutenant Benjamin's battery, which took position upon an eminence or hills immediately in the forks of these two roads, the Warrenton Pike and Lewis' Lane, just to the left of Warrenton Pike.

There is no doubt about that.

On arriving here, and while looking at the ground, within a few minutes after reaching here, a few skirmishers from the enemy's force opened fire upon our group, consisting of General Stevens and orderlies and staff. General Stevens at once threw forward four companies,

who drove back those skirmishers. We then took position, as I have already stated, placing Lieutenant Benjamin's battery upon this eminence, and the two regiments lying down on the ground on the reverse side of the eminence in support of the battery.

Could that have been up there back of the Gibbon woods, where the Recorder placed the batteries? He says Groveton. He locates them exactly between Lewis' Lane and the turnpike.

There were two other batteries posted upon the same knoll with Lieutenant Benjamin's; possibly one of them or perhaps both of them may have been at the right of the road.

1306 That we concede.

I don't recollect, but they were in conjunction and next to his battery. *There were troops to our left. My impression is that they were along Lewis' Lane No.* 1—

Now, that shows.

and in the woods in rear of it which was General Schenck's command. As near as I can recollect, we arrived and assumed this position about ten o'clock in the forenoon.

General Schenck says it was between 1 and 2 o'clock when he retired to the woods. Now, here are two government witnesses. Which are we going to believe? I prefer to believe neither government witness. But I will speak of that presently.

There was no other infantry firing after those skirmishers were repulsed. Soon after we got in position, a very severe artillery contest opened between three batteries posted on our side and a large number of the enemy's batteries that seemed to occupy a long and very high range of heights some distance in front.

Not hollows, but heights.

That continued for some little time, until finally two batteries that were *General Schenck's batteries expended all their ammunition and retired.* Lieutenant Benjamin continued the contest for some two hours after that; at the end of which time two of his guns were disabled and about half of his men, and it became necessary for him to withdraw.

* * * * * * *

Lieutenant Benjamin's and the other batteries were opposed by fully 20 guns. Witness and the brigade moved north across Warrenton Turnpike about 4 o'clock.

Also contradicting General Schenck.

The time of the arrival of Reno (now see what time it was that they got there), of whose command were Benjamin and Stevens, is set down in General Heintzelman's diary as being "nearly an hour after," "about 11 a. m." (we know how accurately the diary was made—on the spot, with reference to his watch), and taking the accounts of Stevens and Benjamin, it stands to reason that Benjamin's time of arrival at Groveton was 12½ o'clock p. m., so that, as will be hereafter shown, Longstreet's command must have been in Gibbon's woods by that time, if not before, for Schenck had fallen back *slowly*, and even his skirmishers had at that time no view of Gibbon's woods, judging from the formation of the ground, and the presence of enemies skirmishing in Groveton.

Excepting the matter of time, General Schenck's report made by Colonel Chesebrough proves, what we claim, that Schenck left the Gibbon woods free for occupation by the enemy long before he thinks, and did not remain in the narrow fringe of woods at all, but fell back to the Lewis Lane woods. Let me explain about Chesebrough's report: General Schenck was wounded the next day in the arm and hand, and was confined to his bed a considerable time. Colonel Chesebrough drew the report.

Our division was advanced until we reached *the edge of the woods* and halted. *In front of us was an open space* (which *also extended to the right of the road and to our right,*) *beyond which was another wood.*

i. e. the Lewis Lane wood, and in front the Gibbon wood.

We remained here nearly an hour, the firing in the meanwhile becoming heavy on the right. The enemy had a battery very advantageously placed on a high ridge behind the woods in front of Milroy, on the right of the road (on Douglass' Heights). It was admirably served and entirely concealed. Our position becoming known their fire was directed toward us. The general determined, therefore, to advance, and pushed on across the open space in front and took position in *the woods beyond.*

Those guns could not have been placed over in that direction near crossing of Pageland Lane, over the Warrenton turnpike, because
1307 he had advanced and got out of their range, and, if he was advancing toward them, he was not getting out of their range.

We here discovered that we were on the battle-ground of the night before, and found the *hospital of Gibbon's brigade* who had engaged the enemy. The battery of the enemy still continued. We had no artillery. DeBeck's and Schirmer's ammunition having given out, and Buell's battery which had reported, after a hot contest with the enemy (who had every advantage in position and range), was compelled to retire. It was now determined *to flank the battery and capture it,* and for this purpose General Schenck ordered one of his aids to reconnoiter the position.

Now, I do not find from any position of the government that they were ever ready to flank a battery, if that battery was down in that hollow, because that was away to their front.

Before he returned, however, we were requested by General Milroy to assist him, as he was very heavily pressed. General Stahel was immediately ordered to proceed with his brigade to Milroy's support. It was about this time, one or two o'clock, a line of skirmishers were observed approaching us from the rear; they proved to be of General Reynolds.

Now, there is a difference in hours. It seems that he does not know anything about hours, except by reference to events.

We communicated with General Reynolds at once, who took his position on our left, and at General Schenck's suggestion he sent a battery to our right in the woods for the purpose of flanking the enemy.

Did not send it out in front of where the Recorder sought to place a battery; it does not seem to have been where "C" was put to indicate that it was Cooper's battery on the "White" map.

They secured a position and were engaged with him about an hour, but with what result we were not informed. *General Reynolds now sent us word that he had discovered the enemy bearing down upon his left in heavy columns, and that he intended to fall back to the first woods behind the cleared space, and had already put his troops in motion.* We, therefore, accommodated ourselves to this movement. It was about this time that your order came to press toward the right. *We returned answer that the* enemy *were in force in front of us—*

General Schenck says he did not know that the enemy were in front, and yet here he is contradicted by his own report, made by Colonel Chesebrough, which he afterwards saw, and from which he adopted certain things. If he had not adopted them he should have amended it—

and that we could not do so without leaving the left much exposed. General Schenck again asked for some artillery. General Stahel's brigade that had been sent to General Milroy's assistance, having accomplished its object under severe fire, had returned, and *soon after General Stevens reported with* two regiments of infantry and a battery of four twenty-pound Parrot guns. With these re-enforcements we determined to *advance again and reoccupy the wood in front of the cleared space—*

Now, this shows that Benjamin had got up where they were; and Benjamin's and Stevens' evidence, taken in connection with this report, establishes the fact that Schenck was behind Lewis' Lane, not up in the fringe, and not in Gibbon's wood—

and communicated this intention to General Reynolds. *He, however,* had fallen back on our left some distance to the rear; he was therefore requested to make his connection with our left.

Now, why were Reynolds and Schenck ever put up there where the government puts them—Reynolds' left being up toward Pageland

Lane—in the face of the evidence they themselves introduced? I do not know.

The Parrots in the meanwhile were placed in position, and under the admirable management of Lieutenant Benjamin did splendidly.

Well, Lieutenant Benjamin was there steadily. He never moved from that spot.

1308 These movements are more minutely described by Colonel Chesebrough in a letter put in evidence by the Recorder:

The information was received through Colonel McLean, who told General Schenck that General Reynolds had informed him "that the enemy were bearing down, &c., and that he (Reynolds) intended to fall back, and has actually commenced the movement." Colonel McLean wished to know if he should act accordingly. General Schenck directed him to accommodate himself to General Reynolds' movement.

We retired *slowly across the open space to and within the woods and halted.* General Stahel rejoined us here, and General Stevens also reported with two regiments of infantry and a battery. General Stevens' force was thrown to the right of the pike, General Stahel on the left of the pike, and Colonel McLean to the left of Stahel. I here state in my report that General Schenck, on receiving these reinforcements, determined to advance again, and communicated his intention to General Reynolds. I carried this message myself, and, after some difficulty, found General Reynolds and requested him to halt and form on the left of McLean. He had fallen back, however, some distance to the rear of McLean's line of battle, so much so that the enemy's skirmishers had actually flanked us, and in returning to the division I had a narrow escape from being captured.

This describes two successive movements to the rear by General Reynolds; one from Gibbon's wood, and afterwards one from the Lewis Lane wood, when Schenck had determined to advance.

And just here the testimony of General Reynolds, given December 30, 1862, in answer to questions by Judge-Advocate and by the court, is quite pertinent. He did not thoroughly understand what amount of force was in his front, and his hour is probably too late, for General Heintzelman's diary corrects him somewhat; but his evidence is conclusive that the troops under Longstreet were forming along the ridge on Jackson's right as early as twelve or one o'clock.

Q. Do you or not know where the enemy's right flank was on the afternoon of the 29th, say towards sunset?—A. I was on the extreme left of our troops, facing the enemy; and their right, towards sunset, had beeu extended across the pike with fresh troops coming down the Warrenton Turnpike. But up to twelve or one o'clock it was not across the pike; and I had myself made an attack on their right with my division, but was obliged to change front to meet the enemy coming down the Warrenton Pike. I was forming my troops parallel to the pike to attack the enemy's right which was on the other side of the pike, but was obliged to change from front to rear on the right to face the troops coming down the turnpike. That was, I suppose, as late as one o'clock, and they continued to come in there until they formed and extended across the turnpike.

* * * * * * *

Answer. Their line changed during the day. *It was on the right up to twelve o'clock, or about that time. In the afternoon it was extended across the pike.* I cannot state how far; the country was *very wooded there* and *I could not see how far across it was.* I thought at the time they were extending it that afternoon until dark.

This thought was occasioned, I suppose, by Wilcox's movement over to the railroad.

Afterwards he answered the court thus:

Q. Do you know when the enemy commenced the movement of which you have spoken, to draw around General Pope's left flank?—A. I supposed it commenced about the time I changed front on the afternoon of the 29th, between twelve and one o'clock; it may have been after one o'clock. I suppose that to have been the commencement of that movement; their re-enforcements were constantly coming up, and their line was extended accordingly; they commenced throwing troops out on Jackson's right as they came up, and extended their right out *along the ridge.*

This ridge is just where Colonel Marshall has designated that line, and not behind Pageland Lane.

The Board will observe that General Reynolds says the enemy, "*as they came up, extended their right out along the ridge.*" Now this ridge is just where Colonel Marshall (Confederate) has designated the lines, and *not* behind Pageland Lane.

1309 General Reynolds and General Schenck must have been mistaken as to the time of the arrival of the enemy, because the following extracts referring to the movements on the pike show they took place on Longstreet's arrival, and General Buford's dispatch shows how early this was. Now I am quoting, also, from the evidence introduced by the government.

[Extract from General Longstreet's Report.]

On approaching the field some of Brigadier-General Hood's batteries were ordered into position, and his division was deployed on the right and left of the turnpike, at right angles with it, and supported by Brigadier-General Evans' brigade. Before these batteries could open, the enemy discovered our movements and withdrew his left.

Before these batteries could open, they had got up. Well, were those batteries in that morass firing at Reynolds? This report shows that the left had been withdrawn before the batteries could open fire.

Another battery (Captain Stribling's) was placed upon a commanding position to my right, which played upon the rear of the enemy's left and drove him entirely from that part of the field.

That is, on the right, not on Pageland Lane, which would be on his left, the very firing spoken of by Captain Barnes as being at five o'clock in the afternoon.

He changed his front rapidly, so as to meet the advance of Hood and Evans.

Report of Brig. Genl. J. B. Hood of operations of his division, Longstreet's command, from Freeman's Ford.

DIVISION HEADQUARTERS, *September* 27, 1862.

* * * * * * *

On arriving at Thoroughfare Gap, the enemy were drawn up in line to dispute our passage. After a spirited little engagement with them by General D. R. Jones's troops, on the evening of the 28th instant, our forces were able to *bivouac for the night beyond the Gap.* The next morning, *at daylight,* the march was again resumed, with this division in the advance, Lieutenant-Colonel Upton, of the Fifth Texas, in command of a party of select Texas riflemen, constituting the advance guard.

Coming up with the rear guard of the enemy before sunrise, this gallant and distinguished officer drove them before him so rapidly that halts would have to be made for the troops in rear to rest. *Early in the day we came up with the main body of the enemy on the plains of Manassas, engaging General Jackson's forces.* Disposition of the troops being made, the Texas brigade advanced in line of battle down and on the immediate right of the pike leading to the stone bridge, *and Colonel Law's brigade on the left.* Arriving on a line with the line of battle established by General Jackson, the division was halted by order of the general commanding.

That shows that they did form, took the turnpike probably about Pageland Lane, and then advanced in battle line until they came up to the Gibbon woods.

About four o'clock in the afternoon the enemy made a fierce attack upon General Jackson, his noble troops holding their ground with their usual gallantry.

At sunset an order came to me from the commanding general to move forward and attack the enemy. Before, however, this division could come to attention they were attacked, and I instantly ordered the two brigades to move forward and charge the enemy, which they did most gallantly, driving them in confusion in front of them.

Were they attacked there—at Pageland Lane? Or does it stand to reason that they were in the Gibbon woods? He does not speak of one movement after they came in line. There was not a movement. They were in the Gibbon wood. The government evidence establishes the petitioner's case, though it was not so intended.

Here is an extract from the report of Col. E. M. Law, of Hood's division, Longstreet's command, of second battle of Manassas:

HEADQUARTERS THIRD BRIGADE, *September* 10, 1862.

* * * * * * *

Leaving Thoroughfare Gap at sunrise on the 29th, the brigade marched in the direction of Manassas Junction. At Gainesville, on the Warrenton turnpike, the
1310 line of march changed abruptly to the left, along the turnpike, in the direction of Centreville. On arriving about *midway between Gainesville and the stone house,* which is situated at the junction of the turnpike and the Sudley Ford road, I was ordered by Brigadier-General Hood, commanding the division, to form the brigade in line of battle to the left of the turnpike, and almost at right angles with it, the right resting on the road, its left connecting with General Jackson's line. The Texas brigade had been previously formed on the right of the road, its left joining my right with a strong line of riflemen in front, which drove the enemy's skirmishers as it advanced. The brigade moved forward, accompanied by Generals Longstreet and Hood, until it reached a commanding position in front of the enemy, *about three-fourths of a mile from Dogan's house.*

Now, take the Peach-Grove-Dogan house, there by Groveton, and measure three-fourths of a mile; the point at the other extremity would fall exactly on the Gibbon woods. And that's where they formed and halted. *These reports were not gotten up in the interest of the petitioner.*

This would be exactly in Gibbon's wood, and it must be remembered that the Southern map of that battle-field, made in 1861, was accurate. We had no such map. This "Dogan's" is "Peach Grove," not "Rose-field." Then, speaking of the Dogan house, he says—

Which seemed to be the center of his position. At this point a severe artillery fire was opened by the enemy's batteries.

It seems that they got to the Gibbon woods before the enemy's batteries opened. So that they were there in Gibbon's woods when Benjamin's battery opened, which was 12.30 o'clock at least. How does that "fit" with the evidence of General Schenck? How does that "fit" with the evidence of Captain Barnes and a few others? I am not responsible for the fit.

A halt was ordered, and the troops remained in position until our artillery could be brought forward. Our batteries took position on a ridge *to my left and rear*—

Douglas Heights—

and opened fire with marked effect upon the enemy.

The fire of the artillery and skirmishers continued almost without intermission until near 4 o'clock p. m.—

That agrees with all the Union testimony—

when heavy musketry on my left announced an attack of the enemy on General Jackson's position. Soon after this attack commenced a brigade of General Jackson's command moved out of the wood on my left, drove the enemy from his position on the bridge to the left of the hamlet of Groveton, and captured a piece of artillery posted there. I immediately moved my line forward as far as Groveton, where it was halted on a line with the troops to my left.

Thus we see that these batteries were not in position until *after* Law's arrival in the Gibbon woods, thus proving clearly the mistake of General Schenck and others, and that this occupation of Gibbon's wood was before Benjamin opened his battery.

[Extract report of Colonel Walton, Washington Artillery, Longstreet's command.]

About noon on the 29*th*, the two batteries in reserve having halted near the village of Gainesville, on the Warrenton and Centreville turnpike, were ordered forward by General Longstreet, to engage the enemy then in our front, and near the village of Groveton. Captains Miller and Squiers at once proceeded to the position indicated by the general, and opened fire upon the enemy's batteries. Immediately in Captain Miller's front he discovered a battery of the enemy, distant about twelve hundred yards—

How singularly this agrees with Benjamin's evidence—

Beyond this battery, and on a more elevated position, were posted the enemy's rifle batteries.

There were two batteries on the right of pike and Benjamin's battery of rifled Parrotts on left of pike.

The batteries were thus in position about noon, and Gibbon's woods were already occupied by the enemy.

1311 Colonel Crutchfield, chief of Jackson's artillery, says in his report that his batteries were withdrawn about 10 a. m. from the Douglas Heights, and Frobel shows in his report and evidence that his position when, about twelve, he came to Douglas Heights was on the extreme left of the batteries, so that we can infer that all the guns in position while Benjamin was engaged were Longstreet's guns. I do not recollect whether Frobel uses the words "Douglas Heights." I think he said the extreme left of the batteries. It is not probable that Longstreet's and Jackson's guns would be mixed up together. So all the guns were Longstreet's guns and not Jackson's.

What stronger evidence is needed of the early arrival of Longstreet in an advanced position than the extracts from Union and Confederate reports just cited?

I shall not notice the evidence as to the advance of Reynolds given by Barnes, Cope, Jones, Hope, and Hollingshead, except to say that what was done as late as five o'clock cannot concern Fitz-John Porter, nor does it matter if two brigades of Reynolds' corps at that hour got up to Cunliffe's and staid for a few minutes. Though the only man who attempts to fix that position is Barnes, and he clearly was mistaken in thinking that he bivouacked near Lewis' (Leachman's) house the night of the 28th—for you will recollect that Reynolds wandered about that night after meeting King for hours before he found his own command, and if they were up near the Leachman house he had only a mile to go. The evidence is that on the evening of the 28th a battle took place in what we know as the Gibbon's wood; that General Reynolds had, previous to that battle, gone off to the south and was coming up around by Bethlehem Church, or somewhere in that neighborhood, up the Manassas and Sudley road onto the Gainesville turnpike again. Hearing the firing, he left his troops and came over and saw King, after the battle was over, somewhere about midnight, and the other generals there on the turnpike. Then he turned to rejoin his command, and did not reach them until daylight. It is singular that he should have had to wander so long when any of the roads led direct to his command, if that command were where Barnes and others think it was. General McDowell found General Reynolds at the Henry house, over a mile to rear of Leachman's, at daylight of the 29th! I think Barnes could not have been so near Hood's line at 5 o'clock.

General Schenck says that his own skirmishers and his own line did not get back to the Lewis Lane till four o'clock. General Schenck did not remember the severe fight by a part of King's division with Hood's division in the neighborhood of Groveton. And again he says that he camped for the night on the south of the turnpike, in the neighborhood of Chinn's; whereas the fact is, as incontestably proved by the reports of Stahel and McLean, his brigade commanders, that he camped on the north of the pike. The time of Benjamin's and Stevens' arrival is shown by General Heintzelman's memorandum taken from a watch, and inasmuch as General Schenck had to depend merely upon the sequence of events, and as he was wounded the next day, and his report from which he refreshes his mind was drawn by another person, and not seen by him till some time afterward, I submit that his evidence cannot be of much weight, especially as he says that his idea of time was derived from a calculation which he makes as to the time he started from near the Chinn

house in the morning and worked up slowly to Gibbon's woods, and then retired slowly to the neighborhood of the Chinn house, giving as a result that he must have occupied half the day in going up and half the day in going back, and therefore must have been there (Gibbon's wood) at one o'clock, and, staying there some time, must have left there between one and three o'clock. Colonel Marshall's testimony that he himself that afternoon rode eastward to the fringe of woods in front of Gibbon's wood, shows that General Schenck was not very accurate in his memory.

1312

General Porter, then, in thinking that Longstreet had arrived with a large force to oppose him by the time of his own arrival, was perfectly right, and the court-martial, in assuming and finding that he did not, was perfectly wrong.

At the trial before that court the following was shown:

Lieutenant Stevenson, who rode from Reynolds' left over to General Porter, saw many of the enemy, and judged 12,000 or 15,000 of the enemy were present. The Judge-Advocate General criticised this young man as being inexperienced in war, and that he could not tell anything about it. But in the light of all these facts he was right. His evidence was disregarded.

General Buford's evidence, that 14,000 men had passed through Gainesville at a quarter before nine, was disregarded.

Major Hyland's estimate that 10,000 men, "probably a larger force than we had," was opposing General Porter, was disregarded.

Col. E. T. Marshall's estimate that the enemy's force was twice as large as all of General Porter's corps, was disregarded.

All these opinions, founded on personal observation, were disregarded by that court and by that Judge-Advocate, to adopt the opinion of that distantly placed, though "intelligent and reliable witness," General Roberts, who never saw General Porter's front at all, and who thought there might be a slight force of cavalry there opposing him.

The Judge-Advocate-General skillfully splitting Longstreet's force, as estimated by General Buford, into two columns of 7,000 men each, and opposing Porter with one and Pope with the other.

And this when General Porter could not testify in his own behalf and show what his own knowledge was. And this at the time when these telegrams published in the report were not at his disposal and when he could not produce them and show what his knowledge was.

Thank God! he has at last proven to have known what was before him!

How wonderful and baseless now do seem the opinions and suppositions of the "four intelligent and reliable witnesses," expressed at the court-martial, as to the absence of the enemy under Longstreet, and the effect of an attack by General Porter on the enemy's right and "rear"!

General Pope's understanding of the situation is shown as follows. He testified (Record, p. 16):

> Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to eight o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.

Again (pp. 34, 35):

> General Porter was expected to attack, if possible—and as I understood it to be practicable—the right flank of Jackson's forces, and, if possible, the rear of his forces, to prevent, if it were practicable, the junction of Longstreet's forces with Jackson's, and to crush Jackson's flank before Longstreet could effect a junction with him. I did not then believe, nor do I now believe, that at the time (4.30 p. m.) any considerable portion of Longstreet's corps had reached the vicinity of the field. I do not know that General Porter, between 5.30 p. m. and 7 o'clock, had the enemy immedi-

ately in his front, though I would think it altogether likely that *Jackson* would have pushed out some force to observe the road between Gainesville and Manassas Junction. It is altogether likely, therefore, that some of *Jackson's* troops were in presence of General Porter's advance, though, of my own knowledge, I do not know that.

1313 Again, he says in his report to General Halleck, January 27, 1862, and to Committee on Conduct of War, May, 1865:

I do not hesitate to say that if Porter had made a vigorous attack on the enemy at any time up to eight o'clock that night, we should have utterly crushed or captured the larger portion of Jackson's force before he could have been, by any possibility, sufficiently re-enforced to have made an effective resistance. * * * I believe—in fact, I am positive—that, at five o'clock on the afternoon of the 29th, General Porter had in his front no considerable body of the enemy. I believed then, as I do now, that it was easily practicable for him to have turned the right flank of Jackson and to have fallen upon his rear; that if he had done so we should have gained a decisive victory over the army under Jackson before he could have been *joined by any of the forces of Longstreet*, and that the army of General Lee would have been so crippled and checked by the destruction of this large force as to have been no longer in condition to prosecute further operations of an aggressive character.

That would have been a very desirable result if it could have been accomplished.

To support his opinion, he adds:

I submit the testimony of General McDowell, an intelligent and reliable witness:

Q. By Judge-Advocate. What would probably have been the effect upon the fortune of the battle if, between five and six o'clock in the afternoon, General Porter, with his whole force, had thrown himself upon the right wing of the enemy (Jackson) as directed in the order of 4.30 p. m. of the 29th of August?—A. *It is a mere opinion that you ask?*

Q. Yes, sir.—A. I think it would have been decisive in our favor.

Q. Please state the ground on which you formed the opinion, that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor.—A. Because on the evening of that day I thought the result was decidedly in our favor, as it was. But, admitting that it was nearly equally balanced, I think, and thought that if the corps of General Porter, reputed one of the best, if not the best, in the service, consisting of between twenty and thirty regiments, and some eight—

(There were only six)—

batteries, had been added to the efforts made by others, the result would have been in our favor very decidedly. * * * And besides the mere advantage in numbers from which that result would have followed, the position in which this force would have been applied, while the main body was so hotly engaged in front, would have been an additional powerful reason for so supposing.

That the testimony of this witness was inferential entirely is made apparent when cross-questioned by the court (p. 221):

Q. From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of General Porter's corps, near the Manassas Railroad, on the south side of it?—A. I have no positive knowledge on that point. I have not supposed that there was, but I cannot support that supposition by any positive facts.

Q. If there had been any such force in front of General Porter's corps and south of the railroad, do you think, from your knowledge of the ground, that would have prevented General Porter from obeying the order to attack the right wing of the main body of the enemy?

(The accused objected to the question as not being in the nature of rebutting evidence. No member of the court sustaining the objection, it was ordered that the question be answered.)

A. *I do not know where the right wing of the main body of the enemy was at that time.* Such a force of the enemy, in such a position, would itself most likely have been the right wing of the enemy, so far as I can imagine the case. The distance from General Porter's head of column to the road at that time was not so great as *to have enabled a large force of the enemy to be between them* and to be detached from the main body of the enemy.

Again, under the supposition that Longstreet did not intervene, General McDowell testified:

To have defeated General Porter in an attack upon the enemy's (Jackson's) right flank and rear, would have required a large force of the enemy, which would have

relieved the attack in front, and, I think, would have still have resulted in a success to our side.

1314 This shows that he misunderstood entirely General Porter's position, and put him up at Hampton Cole's. General Porter was said and thought to be where he never was, and the Recorder's supposition as to the position of Longstreet's command was, in the view of the court-martial, entirely erroneous. O, the errors were serious, and General Porter suffered for them, and nobody else.

General Roberts, the nominal accuser on the record, was also as inferential in his testimony. He testified (pp. 49, 50, 51, 52, 214, 216, 217):

A. As I understood the relation of General Reynolds with the Pennsylvania Reserves to the enemy's right, General Porter's reserves having attacked the right of the enemy would have brought him in close connection with Reynolds' left.

The right of the enemy being down *here* (near Deat's), it would have been two miles to Reynolds' left. The right of the enemy being up *here* (back of Stuart's Hill), it would have been the same distance.

Q. Will the witness inform the court whether, at any time in the course of the day of the 29th of August, he saw the command of the accused and the enemy in such a position as to make an attack by General Porter upon the flank or rear of the enemy possible?—A. I did not see General Porter's command on the field on Friday, the 29th of August. But I *suppose* that I know nearly the position where General Porter's command was between four and five o'clock, and I *supposed* that I had seen the smoke from guns of his command. I know the direction of the road from Manassas Junction to the field of battle, and, in my opinion, General Porter was in a position where he could have moved forward and have attacked the right of the enemy; and I also believe that he could have turned the enemy's right flank and attacked their rear, from what I know of their relative positions and from what I know of the country.

Q. Between 4 and 5 o'clock p. m. of the 29th of August, did the witness know whether or not Longstreet's forces, in whole or in part, had made junction with Jackson on Jackson's right?—A. I did not know; but I had reason to believe that they had not *made junction*, as I had been requested by General Pope, before going on to the field, while at Centreville, in the morning, to take a position, and with a glass to observe whether troops were moving from the direction of Thoroughfare Gap to Gainesville; and having closely observed that country for a long time, I became convinced from the clouds of dust that arose above the Bull Run Range beyond Thoroughfare Gap—

Now this is delicious—

towards a gap north of Thoroughfare Gap, the name of which I now forget, that Longstreet was moving very rapidly to get through that northern gap and to re-enforce Jackson. But, from the distance from the head of the column of dust to Gainesville, I did not believe that he would be able to effect a junction before late in the evening, and so reported to General Pope.

Q. Such having been the opinion of the witness during the day of the 29th of August, will he please state whether, up to the present time, he has become satisfied that Longstreet's forces, in whole or in part, did effect such junction with Jackson's right in the afternoon—say between 5 and 6 o'clock, or before that time—on the 29th of August?—A. I am convinced, by information that I have received since that day, that a part of Longstreet's forces effected a junction with Jackson in the evening of the 29th, I think about dark.

Q. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the results upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?

The accused objected to the question.

The court was thereupon cleared.

Some time after, the court was reopened, and the Judge-Advocate announced that the court determined that the question shall be answered.

The question was again propounded to the witness as follows:

Q. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the results upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?—A. I do not doubt at all that it would have resulted in the defeat, if not in the capture, of the main army of the Confederates that were in the field at the time.

1315 The witness had been requested by General Pope to learn what enemy was on his right, and he sent cavalry to find out.

He testified (p. 214):

I found only a force of mounted men with some light artillery, who were watching all our movements on the right flank, and I inferred that it was a similar force to that which was on our left watching our movements there, which were in front of General Porter.

Nothing about dragging brush.

Again (p. 216):

Q. From your knowledge of the position of the enemy on the 29th of August last, will you state how many of them were south of the Manassas Railroad, or in front of General Porter's command?—A. I do not believe, from what I know of the enemy's forces, that there was any force in front of General Porter's command on that day except a cavalry force in observation there, with some light artillery.

Lieut. Col. Thomas C. H. Smith, another prosecuting witness, testified (pp. 71, 72, 75) on direct examination:

Q. Are you sufficiently acquainted with the disposition of the forces under General Pope, and of those of the enemy at that hour, to express an opinion as to what would have been the effect of an attack of General Porter's corps upon the right flank of the enemy at between 5 and 6 o'clock p. m., of that day?

The question was objected to by the accused.

The court was thereupon cleared.

After some time the court was reopened, and the Judge-Advocate announced the decision of the court to be that the witness shall answer the question.

The question was then repeated as above.

A. I do not know as I am sufficiently acquainted with the numbers and disposition of the enemy to give a conclusive answer in regard to that. I can give my view of it and give the reason why I think a flank attack would have been successful. The enemy were fighting a defensive battle.

At this point the accused suggested to the court whether, in view of what the witness had said in regard to his knowledge of the numbers and disposition of the enemy, it was proper for him to proceed with his answer.

At the request of a member of the court the court was cleared.

After some time the court was reopened. Whereupon the Judge-Advocate announced the decision of the court to be that the witness proceed with his answer.

The witness continued as follows:

A. The enemy were fighting a defensive battle. Their right lay near the turnpike road between Warrenton and Centreville. The main force, from which they were detached for the time being, were off towards Thoroughfare Gap, or beyond it. Their position was a strong one for defense in front and in the direction in which the three corps of Sigel, Heintzelman, and Reno were fighting them. Far and back from the front they had a line of retreat towards Thoroughfare Gap, towards their main force. The direction of a flank attack moving on the road from Manassas to Gainesville, and then moving in upon their flank, was such as to cut off their line of retreat. We drove them off the ground as it was. I believe that if the attack had been made on their flank at that time, between 5 and 6 o'clock, exhausted as they were by the fighting through the day, it would have made the defeat a rout, by striking them on their line of retreat towards their main forces, and rolling them up on Bull Run and the east of the Gum Spring road, and so on in that direction.

In saying that I did not know their disposition sufficiently to give a conclusive answer, I meant, of course, that I did not know the amount of force on their right. But from the fact that all our attack had been directed with our left resting on that road, and their right apparently resting there, I supposed that if they had a heavy force beyond that road they would have attempted a flank attack upon us. The appearance of the field was such as to lead one to suppose that the entire force of the enemy, except perhaps something thrown out to guard that flank, was right in front of us on those ridges. That was where all their artillery fire was, and there was where the fight continued during day. They were fighting in that position, with their backs towards their main force. Of course, though we might drive them off the field, we could accomplish not any great success, with their great force in the rear and off beyond Thoroughfare Gap. This flank attack was the main attack to decide the battle, by striking them quartering on the flank and cutting off their line of retreat, so that they could not unite with their main force in that direction.

1316 Q. You have no knowledge of General Porter's position with his command during the 29th of August?—A. I have not.

Cross-questioned by the defense:

Q. You have said, if understood correctly, that the whole of the enemy's forces, while the battle of the 29th of August was going on, was not on the field in front of the Union troops?—A. Yes, sir.

Q. What proportion of the enemy's forces was in the rear on that occasion, as you supposed?—A. I believe, as far as we had information from spies, &c., that we had Jackson and Ewell in front of us then, and a part of Longstreet's force that came on to the field.

Q. Was not General Longstreet there?—A. I do not know; I understood that General Buford counted a portion of the enemy that passed through Gainesville, which were all the re-enforcements that got up for the enemy that day, *I think*. I cannot remember distinctly when he reported that, or how it came to us.

Q. Do you know whether General Longstreet, with the forces under his immediate command, joined the enemy at that time, and on what portion of the enemy's lines?—A. No, sir; as I said before, all I can give is the impression derived from the appearance of the field in front of us as to where the enemy were and what their force was; that combined with such information as we had received of their movements the two or three days previous.

Such is the testimony of the four "reliable and intelligent" witnesses for the prosecution. Not one of them knew General Porter's position, or supposed that any but a small force of cavalry and artillery was in his front during the day, or that Longstreet was present till a late hour in the day. Each witness seems to have considered General Porter where General Pope has assigned him on his map—a mile in advance of his actual position.

That these opinions of witnesses which have been proved to be so untrustworthy should never have been relied upon by the court, there can no longer, I submit, be a shadow of a doubt.

We now return to General McDowell and General Porter, as they rode on the ridge before Dawkins' Branch; General McDowell knew, therefore, of the presence of the enemy; he acknowledges in his testimony that he supposed this force mentioned in General Buford's dispatches was a part of the four divisions which had been pressing through Thoroughfare Gap the evening of the day before, and although he says that he supposed it to be smaller than General Porter's command, yet he supposed that the remainder of the four divisions was advancing from behind; the inference is certainly to be drawn from his testimony before this Board that General McDowell supposed the line of dust in his front to be the line of the Gainesville turnpike instead of Meadowville Lane. It is not and it cannot be pretended that General McDowell did not know that he and General Porter were sent up on the Gainesville road in order to take position in the battlefield of Gibbon of the night before. General Pope had provided, first, that General Porter with his command of about 9,000 men, together with King's command of some 8,000 more, should execute this movement, but on learning that Ricketts had fallen back from Thoroughfare Gap, in the joint order addressed to McDowell and Porter, he adds Ricketts' division of 8,000, too, and thus proposes to throw 25,000 men on the Gainesville turnpike, between Jackson and Longstreet.

Morell's division of the Fifth Corps were already partly deployed when General McDowell arrived, and he could see it; there they were in line of battle in plain sight.

Now, General McDowell at once and for the first time assumed
1317 command,* calling out, "Porter, you are too far out; this is no

*General McDowell has always contended that he assumed command before the joint order came, and that at General Porter's suggestion; but General Porter has always denied it, and has always said, and sworn to it before the McDowell Court of Inquiry, that General McDowell asked him to put General King on his right, as a favor, so as to be able to join King's troops with those of Ricketts and Reynolds, when King should be returned to General McDowell's command. General Gibbon confirms this.

place to fight a battle." This language in effect was testified to by Captain Martin and Colonel Locke on the trial, and by Lieutenant Davis and Major Earle on the present inquiry.

General McDowell never denied saying this, but said that he never said it with reference to the topography of that immediate field, but that the conversation was with reference to distance from Bull Run.

Which corresponds with General Porter's own idea of the meaning of that conversation.

Thus General Porter's offensive movements were checked by his commander, and what further was done in pursuance of this plan not to fight a battle will be considered hereafter.

The order under which General McDowell rightly assumed command is known as the joint order.

General Pope and the Judge-Advocate-General say that the address of that order to both generals shows that it was not intended for McDowell to act, except as an equal. But this is a quibble. The orders were so addressed because several orders were written at once, with a stylus and carbon sheets, to expedite the sending. And at any rate General Pope was not on the field, being eleven miles away, and no one save the President of the United States could, under the 62d article of war, prevent General McDowell from assuming command.

That joint order is as follows:

[General Order No. 5.]

HEADQUARTERS ARMY OF VIRGINIA, *Centreville, August* 29, 1872.

You will please move forward with you joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that, as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so, on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall upon the enemy's flank and rear.

That shows the whole design of this joint order. They were to get back there and have the key to the whole battle-field in the possession of Stuart's hill.

I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning.

Had General Porter, after General McDowell left, and when he was no longer under his command, the same discretion that McDowell had, and if he knew all about the presence of this enemy, and if his attack would have been futile, had he not a right not to attack with 9,000 or 10,000 men opposed to 25;000 men?

General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable.

Here were 25,000 men.

If any considerable advantages are to be gained by departing from this order it will not be strictly carried out. One thing must be held in view, that the troops
1318 must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day.

Well, they were all there; showing the misunderstanding under which he issued those orders. How could General Porter tell where headquarters were? How could he know where Heintzelman was?

My own headquarters for the present will be with Heintzelman's corps or at this place.

JOHN POPE,
Major-General Commanding.

Generals McDOWELL AND PORTER.

McDowell was well aware of the purpose of this movement, and he was well aware that General Porter's feeble force of 9,000 could not by any possibility cope with the four divisions, who had had all that morning to march from Thoroughfare Gap, and, therefore, when he determined, as he did afterward determine, to leave General Porter confronting this position, it is consistency to say that he did not think that any severe action would take place. In that event, if he supposed that this force was but a part of these four divisions, was it not still his duty to march against them and seize their position with his own command and General Porter's as much as if that spot had been vacant?

The country to the left of General Porter was open (it is known to the inhabitants as Manassas Plains), and General McDowell could readily have marched his whole command and formed on General Porter's left. The railroad on General Porter's right was open, and General McDowell could readily, as far as it appears, have marched his troops up that railroad, and if no considerable number of the enemy was in his front, have deployed on the right of General Porter and then connected with General Reynolds and have had his whole corps together. This would have been the more expeditious way of achieving his ardent desire to unite his own division.

But neither of these ideas seemed to have occurred to him, and it stands to reason that he knew he could not form his force in front of the woods, to General Porter's right, because the enemy was too strong. His going into the woods with the design of taking Generals King and Ricketts or Porter through there shows that he wished to march concealed from the enemy and avoid battle. Indeed, his whole action on that occasion shows that it was not his purpose to engage in battle till further orders.

With a puny force in his front it would have been far easier for him to have marched up the Gainesville road, supporting General Porter's attack on the enemy till they should have been speedily driven back, and then to have formed between Generals Porter and Reynolds in a position commanding much of the Gainesville turnpike, and occupying Monroe's Hill, which the Recorder regards as the key to that whole country.

General Porter had begun a deployment, and had sent out skirmishers—had even sent out a brigade under General Butterfield. General McDowell had come up, and seeing this deployment, had exclaimed: "Porter, you are too far out; this is no place to fight a battle." General McDowell does not deny having used these words. General Porter, understood their meaning to be that they were too far in advance of Bull Run—too far from the supports coming up from the Army of the Potomac. The effect of them was to stop the deployment, to occasion the recall of General Butterfield's brigade as it was advancing beyond
1319 Dawkin's Branch, for General Butterfield says that on his return from his movement to the front (his brigade having returned without him)—

> I met one of General Porter's staff officers, and entered a complaint against his order withdrawing my troops without an order coming from me, while I was in front. I received answer that it was a sudden movement in consequence of something that had occurred between General Porter and General McDowell.

The two generals, McDowell and Porter, rode into the woods to the northeast.

Just behind them came members of their respective staffs. They rode down to a little brook and watered their horses, and then, seeing the difficulty of the country before them, which has been so well de-

scribed by Lieutenant Randol, by General Warren, by Captain Judson, and by Mr. Leachman, a resident of the battle-field, the two generals concluded that that country was impracticable. If there was a boulevard through there, why did not they take it? This is General Porter's account, but not General McDowell's. But I have to state that since the making of this accurate map General McDowell no longer maintains, what he has hitherto done, that General Porter was expected to march his command through those woods toward General Reynolds' force, but, on the contrary, as he now states, his intention was that General Porter should advance over the open country in the direction of Hampton Cole's, which it would seem from his evidence he considered to be on the Warrenton turnpike; so that this change of opinion, or rather of front, by this intelligent and reliable witness, on whose evidence as to the nature of that ground the court in former days rested, has rendered useless (it makes no difference whether there was a boulevard there or not) all evidence as to the impenetrability of that region (B. R., 810); and seeing that it was impenetrable, and it being evident from the repeated declarations of General McDowell before you as a board that his determination was to go to the right and to join the divisions of King and Ricketts to his other division of Reynolds, General Porter suggested that the only way he could do it was to take them round to the rear by the Sudley road. The Recorder has seen fit to assert that General Porter has re-formed his case since its trial and since his evidence before the McDowell court of inquiry; that now he says that it was General McDowell upon whom the responsibility of going to the right should rest, whereas then he testified before the McDowell court of inquiry that it was at his own suggestion. The Recorder has been too engrossed in searching for evidence to notice all the minor details of this case, and he should, certainly before he makes such grave charges as he has in his opening address against General Porter, examine closely into the foundations for those charges; for General Porter has said upon page 31 of his opening statement, and I incorporated it in my address: "*And it was suggested, perhaps by myself, that the only way he could have King on the left of Reynolds or of the troops near Groveton was by taking King, then in my rear, on the road* near Bethlehem Church, up the Sudley Springs road, to come in between Reynolds and me"—to carry out McDowell's desire and suggestion that the only way was to go in the rear up the Manassas and Sudley road; and it was; but simply by reason of the presence of the enemy, and nothing else. That General McDowell did this is well known, and that he was determined to do it he has repeatedly declared. General Porter's suggestion, then, was merely as to the only practicable route, and General Porter's statement of the facts is more in accordance with the circumstances surrounding them than General McDowell's; and whereas the Recorder says the statements of General McDowell and General
1320 Porter are diametrically opposed, General Porter's statements should certainly be taken rather than General McDowell's, for they are more in accordance with facts and with wisdom.

General Porter has stated that it was not the intention of the two generals to give battle that day unless ordered. When I say it was not the intention of the two generals to give battle that day, I refer particularly to the time when they were together, for General Porter's movements, subsequent to McDowell going away, and when he sent to have King brought back, show that he contemplated an attack at that time, because then he would have sufficient troops. And yet General McDowell says that he ordered General Porter "to put his troops in there," and he now

states that this was a general direction—that it was not necessarily any direction to attack with any force. There might have been merely a tentative attack or a strong skirmish line, but about those details he did not bother his head. General Porter was corps commander, and was to find out how to act.

Now, it is impossible to convict General Porter upon this joint order, for it will be seen that he was to march, in connection with McDowell's force of two divisions, upon Gainesville, and these two divisions, with his own, numbered 25,000 men. The object of that march was as well known to General McDowell as it was to General Porter, and that was that they were to go back toward Gibbon's battle-ground of the evening previous, or, as Pope says, toward Gainesville, and not toward that battle-ground, and interpose between Longstreet and Jackson; and when Porter's troops arrived upon the borders of Dawkin's Branch, General McDowell must have seen that his movement upon the turnpike had been anticipated by the forces coming through Thoroughfare Gap. It matters not under what commander, for he says there were four divisions pressing through there.

General Porter says General McDowell parted from him very abruptly, without saying anything about what Porter should do, but simply galloping off eastward through the woods, along the railroad. The only adieu was a wave of the hand. Captain Monteith testifies that General Porter called out to General McDowell, as he was leaving abruptly, "What shall I do now?" and that the answer was a wave of the hand. Well, where was the order of General McDowell? Why, it was left to General Porter's *discretion! He was the corps commander!* General McDowell *took no notice of these details!* And General Porter was convicted! The speed with which General McDowell rode off is acknowledged by himself, and that he went down south of the railroad, through the woods, is admitted by General McDowell. General Porter has stated, and the Recorder finds fault with his statement, that he did not know where McDowell was going, although he has made other declarations that it was understood that McDowell was about to take King along the Sudley Springs road. This is no contradiction. General Porter found out afterward through Colonel Locke that General McDowell had actually gone to Bethlehem Church, and ordered his troops under King and Ricketts to withdraw, along the Sudley Springs road, northward, but Porter did not *then* know where McDowell went to. He did not know whether it was actually to be done or not.

General Porter then rode back, and saw the rebel troops crossing the open ground behind Carraco's as he himself was crossing the railroad and coming upon the high ground of the open space on the railroad, near where the cabins of the railroad hands had been erected, which open space is correctly depicted on General Warren's map. Now, if *I* were going to draw a map *I* would follow the testimony on the
1321 trial, and that of the neighbors of that vicinity, instead of following the testimony of two men from West Virginia who judged by the opening as to the length of time it existed there. It is not shown that they were expert woodsmen. They were both lawyers, and men who practically knew nothing upon that subject.

I would draw an opening as near to the fact as I could get it; and if *I* were informed that there was an open field there, a sort of patch in the woods, *I* would delineate that. *I* would never think of drawing a map with a large open space upon it. It may be that way now, but there is no testimony that it was that way then, except the testimony of opinions. Now, are we not tired of opinions? Has not the court-

martial rested on opinions? Have we not had wrong judgments made on opinions? And is it not about time that opinions ceased to be taken as evidence? I think so. Well, that was a very prominent position that General Porter reached; that was a high point of ground. Lieutenant Randol testified as to that; he was on the spot that day. He testified that it was a patch in the woods. General Porter when he reached that point on the railroad saw Confederate troops up here formed in line [Hampton Cole's].

His determination was then taken that if he could have King to support him he would hurl 17,000 men, at least, upon the enemy, and prevent his junction with Jackson or be defeated himself. (I wish to say, in regard to any possible reference that the Recorder may be the author of in his argument as to the open ground in these woods, that we have just recalled for that express purpose the two witnesses, Wheeler, who was a government witness, and Leachman, who was our witness, both residents on the field, to the effect that this open ground was a recent matter.) He made this statement before the McDowell court-martial. He did not know, of course, at that time that the Confederate force was actually joined on to Jackson's right, though he did know that a strong Confederate force was in his front. Proceeding from that point he met Colonel Schriver, and, as that witness says, requested of him the use of some of General McDowell's escort as orderlies, and Colonel Schriver says that he gave him about half of these mounted orderlies. Before proceeding into a further account of that day's incidents, I wish to speak of a subject foisted upon this case by the government, with no apparent purpose save that of proving that General Porter had told an untruth. The Recorder has introduced evidence here to show that a party of cavalry, numbering, perhaps, seventy-five, or perhaps less, may be fifty, under Captain Taylor, of Colonel Jones' Pennsylvania regiment, came up the road at the head of General Porter's column, and halted upon Dawkins' Branch, and after a little while was moved to the left, and formed to the left of the road. There the men either may have remained mounted or dismounted, to rest their horses, so far as the evidence is concerned. General Porter had asserted, as Colonel Schriver says, that he had no cavalry to carry messages, and also asserts in the dispatch recently produced by General McDowell, and dated 6 p. m., that "he had no cavalry or messengers now." But the Recorder fails signally in his endeavor, because it will be remembered that General Porter remained behind talking with General McDowell at Manassas Junction, and there is no proof that he did not do so, but ample that he did, and that he afterward rode on and came up with his column *after* it had halted on Dawkins' Branch. So that, according to this and the evidence of Captain Taylor, it does not appear that General Porter can have the knowledge of their presence brought home to him. If you are going to prove that a man tells a falsehood, you must show that
1322 he knows what he is talking about. The definition of a lie is, a willful statement of a thing known to be untrue by the author of it. Now, there is no willfulness about this, and no evidence of knowledge on the part of General Porter.

Captain Taylor says he is unable to say to whom he reported, that he had received an order to report to General Porter's command, and he *presumes* it was to one of the staff officers that he reported, but he was with General Morell's division (B. R., 905). He cannot state positively that he saw even General Morell, with whose division he was that day, but he says he saw his staff officers. He received no order that he recollects from General Morell for any special duty. Of those witnesses introduced

to establish that point not one of them can say, or has said, that they saw either General Morell or General Porter. On the contrary, General Morell says he has no recollection of having seen them, and I submit that whether they were there or not is in no way important. General Porter did not think they were there; he had no motive for saying that they were not there, and the truthfulness of a man must be presumed where no motive can be assigned for an untruth. Approaching once more to his front, General Porter sent Colonel Locke to General King with the order to remain where he was until further orders, thus intending to keep King in the reserve while he himself attacked. Colonel Locke says that on finding General King, General McDowell was with him. "I stated my message to General King, and General McDowell answered: 'Give my compliments to General Porter, and say to him that I am going to the right and will take General King with me. I think he (General Porter) had better remain where he is, but if it is necessary for him to fall back, he can do so upon my left'" (p. 135, C. R.). General McDowell has never contradicted General Locke, but says that he has no recollection of this interview, and although General King stepped down from the bench and gave testimony that he was not with General McDowell at that place, still Colonel Locke said that there was another officer whom he always confounded in personal appearance with General King. And the witness Leipold, brought here before you as a new witness, who was the orderly of Colonel Locke on that day, does testify that such a journey was made by Colonel Locke, to wit, from the front near Dawkins' Branch down to the vicinity of Bethlehem Church, in the rear of General Porter's corps, and that General McDowell was standing with some other person, dismounted, and had some conversation with Colonel Locke, and then returned with him to the front, where Colonel Locke communicated with General Porter. This corroborative evidence sufficiently establishes the fact of the interview, and as to its words, they have never been contradicted. Captain Monteith says that he knew the fact that the order to General King was written by General Porter and given to Colonel Locke about that time.

Before going on with my argument I should like to ask the Recorder for what purpose he introduces the following reports: On page 526 of the record, in his argument, the report of Maj. Gen. J. R. Trimble of the capture of Manassas in the night-time, and the several others referring to the same action. I want to ask him if they are introduced for the purpose of commenting upon the possibility of General Porter's marching on the nights of the 27th-28th of August.

The RECORDER. What is the date of that introduction?

Mr. MALTBY. That was introduced in your argument in a mass of reports.

The RECORDER. I think the record shows that I formally introduced those reports.

1323 Mr. MALTBY. Formally used them.

The RECORDER. Yes.

Mr. MALTBY. It shows that you merely introduced them in the argument without referring to them, without reading them.

The RECORDER. The documents show for themselves.

Mr. MALTBY. Then I will comment on it. These documents can, according to my idea, have been introduced solely for the purpose of showing that on the night of General Porter's order to march at one o'clock an attack was made upon Manassas Junction and it was captured by the Southern forces. If it was introduced for that purpose, then it is very much like the circular of General Pope and General McDowell, for

they refer not at all to that night; they refer to the night of the 26th-27th; and I cannot see any other purpose for which they could be introduced, and I say that such introduction was entirely improper. It is headed, "Report of Maj. Gen. J. R. Trimble of the capture of Manassas in the night-time." It is immaterial if introduced for any other purpose. There are three of them on pages 526 and 527, B. R.

(Mr. Maltby then produced the original map used before the court-martial in 1862 with various positions marked thereon, and also the same position extended on one of Warren's lithographed maps made for this Board.)

Before proceeding further, I would like to speak in reference to these two maps. *Here* [on court-martial map] is the first stream. Now, General Porter, in his evidence before the McDowell court of inquiry, says that he reached the first stream after leaving Manassas. *There* it is. Colonel Smith has testified before you that he placed General Porter in the remarkable place that he did, because he thought that General Porter was on the second stream. The board will doubtless remember, however, that he placed General Porter in effect *here*. [Beyond second stream in a position on court-martial map corresponding to Hampton Cole's on Warren's 1878 map.] This [showing the Warren map] has the positions that were drawn on the map of N. E. Virginia extended upon a map of large scale and more accurately surveyed, as we have indicated, we think, as nearly as possible exactly what those original marks were, the rebel line running down farther in front of the Brower Douglas house even than we claim, near Dogan's across the open in front of Lewis Lane, slightly to the eastward of the Lewis Leachman house, and so on to just west of the Compton house. It was not there.

The RECORDER. Was that in evidence?

Mr. MALTBY. Well, it was not offered. I am offering it for the purpose of illustrating.

The RECORDER. Do you offer it in evidence?

Mr. MALTBY. I may say——

The RECORDER. I ask the question.

Mr. MALTBY. Well, I offer it in evidence.

The RECORDER. I object.

Mr. MALTBY. I have a right to introduce before this Board a map with the lines drawn upon it similar to those which are drawn upon maps which are before the Board.

The RECORDER. That is a different thing.

Mr. MALTBY. It will be perceived that General Porter at that time was rather to the right and rear, even if he was in this position. And that must have been the idea of the court. If he was in this position which has been adopted by Colonel Smith and by others he was far to the right and rear, so that the court at that time must have been mistaken as to the relative positions of the southern forces and
1324 General Porter's forces. On this map [N. E. Virginia] there are no woods shown, and General McDowell in testifying to the practicability of the country would not be led by this map to remember at all how the woods were placed, except that there were woods here in the front. You will observe off towards the pike, it, as the evidence shows, must have been a place where he thought the rebel troops were; it is clear, open country. There are no indications of woods back of General Porter's real position or to the right, except away up *here* [ ], General Reynolds being off *here* [ ].

The PRESIDENT OF THE BOARD. All this is what is called Manassas Plains?

Mr. MALTBY. Yes, sir. Although General McDowell, in determining to cease advancing upon the Gainesville road, and in ordering his division to go up around Sudley Springs road, was no longer General Porter's commanding officer, yet this message had the force of an order, because it was the result of his order for King to march over the Sudley Springs road; that General Porter, having only about ten thousand men—too small a force to attack the enemy—was as much bound by his conscience to remain where he was as if General McDowell had actually the right to order him to do so.

Hence the confusion in terms and the opportunity given to the Recorder to say that General Porter has contradicted himself.

I do not intend to go into a disquisition upon mental philosophy or psychology, but I think it must be apparent that what General Porter has said concerning this message of General McDowell is self-explanatory.

During Colonel Locke's absence on this errand, General Morell's division had been ordered to advance to the right, but, forced as he was to remain inactive, General Porter recalled General Morell, threw back his command into the woods, and this movement caused the retiring, by perhaps a quarter or half of a mile, of General Sykes' division on the Manassas road until it had traversed the space occupied by General Patrick's brigade, and arrived about Bethlehem Church, farther than which to the rear this command never stirred during that day.

This movement on the part of Morell's division is thus described by that General (p. 146, C. R.):

> After a while I saw General McDowell and General Porter riding together. They passed off to our right into the woods towards the railroad; and after a time General Porter returned, and, I think, alone, and gave me orders to move my command to the right, over the railroad. I started then, and got one brigade and I think one battery over the railroad, passing through a clearing (a cornfield), and had got to the edge of the woods—the other side of it—when I received orders to return to my former position.

THERE WAS NO RETREAT MADE BY GENERAL PORTER'S COMMAND AUGUST 29, 1862.

I am tempted to speak of this retreat of which General Porter has been found guilty in the manner in which the famous chapter on the Snakes of Ireland was composed, to wit, "*There was no retreat*," and thus end the whole subject. But several witnesses have been introduced by the Recorder to show that such retreat did occur, for instance Lieutenant Randall (B. R., 725), Buchanan's brigade, Sykes' division, to prove that there was a retiring movement of some two miles from his original position. The witness afterward modified that statement by saying that he marched back half way from his advanced position to
Bethlehem Church, and his advanced position was three-fourths
1325 of a mile from the front, and was back of General Warren's advanced position (at Birket's), so that witness's advanced position was a mile from Bethlehem Church, and he retired half a mile. Also Captain Coppinger, of the First Regular Brigade, Sykes' division, says that he was marched quite a distance to the rear, which he says was about one or two miles, but he also says (page 949, B. R.):

> A. We were marched to the rear in columns of fours.
>
> Q. To what point?—A. I cannot give you the point, but the next point I recollect is being on a side road which leads off toward the battle-field of Bull Run. Perhaps it would be better if I were to say that my memory of that battle-field—I was left on the field between the lines, senseless, until the next day, and my memory of both those days is somewhat spasmodic. Some things I see as clearly as anybody I see in this

room; and there are intervals of which I have a very poor recollection. Now, between the time of our being marched *here* and our being halted, I don't recollect. [Witness indicates points on the map.]

I shall not consider the evidence of Dr. Faxon and Solomon Thomas—it is too trashy.

Well, what is the evidence introduced for General Porter in the case?

Why, that his troops did not go to the rear beyond Bethlehem Church; that two of Morell's brigades were always in battle line along Dawkins' Branch, as originally formed; that, therefore, there was no room for a retreat, the distance being only two miles, and that whole distance being occupied by the column.

I shall not weary the Board with citing the evidence on that point, because I do not believe the Recorder will claim that there was a retreat.

The whole government theory on that point is completely overturned. Pope's map made by T. C. H. Smith, and published in his report to the Committee on the Conduct of the War, places General Porter's forces a mile in front of their actual position, and thus gives room for retreat, but even Smith acknowledges the error.

That there was no retreat is supported by General Morell, General Sykes, General Warren, General Butterfield, General Buchanan, Colonel Locke, Colonel Marshall, Major Hyland, Major Earle, Captain Monteith, Lieutenant Randol, Lieutenant Davis, Captain Baker, fourteen witnesses, and none of the other thirteen witnesses called from that corps, and from the cavalry said to be stationed there, testify of a retreat. Now, if there had been any retreat these witnesses would have known of it and have testified to it.

It is true that General Piatt's brigade of eight hundred and twenty-four men were ordered to retire to Manassas Junction; I presume because General Porter thought it would be necessary to retire behind Bull Run, as General Pope's joint order contemplated, and he sent them there, as General Sturgis testifies, to take up a defensive position in case the enemy should penetrate between the main army and General Porter's detached force.

But Piatt's brigade did not go to Manassas Junction, and was recalled so soon that, even if it had been an important body of men, it would have got back in time to support an attack or a defense. General Piatt says he was back at between 4 and 5 p. m.

This charge of retreating, of which General Porter was found guilty, was necessarily the only instance in which he could have been supposed to have disobeyed the joint order. Disobedience of General McDowell's command (even if a command was given) could not be said to be a disobedience of that joint order; for General Pope says he never intended General McDowell should have any authority over General Porter under it. General McDowell changed the direction of his march, be-
1326 cause, as he *thought*, considerable advantages were to be gained.
Up to the time when he left, that joint order had been obeyed and executed, as he himself says.

Now General Porter could no longer march on, for he had no support, and it was never contemplated that he should go on without support, and even if his remaining quiet along Dawkins' Branch was a departure from it, we have amply shown that material advantages were gained by his doing so, and I say that his cool-headed inaction was wiser than any hotspur brigade attacks during that day.

On the court-martial Colonel Locke swore there was no retreat at all; the corps remained there until daylight next morning and the batteries were in place (C. R., 135).

General Sykes said, "My command lay between Bethlehem Church, on the Gainesville road, and the position, probably a mile in front, that we had marched in moving out on that road. I was immediately behind General Morell's troops on that road" (C. R., 178).

General Butterfield testified that he marched to a "little beyond Bethlehem Church," and that he received an order to move from there at half past three or four o'clock in the morning, to move his command from that position (C. R., 186).

General Morell said, "We remained in that position during the day (*i. e.*, on Dawkins' Branch). * * * I then put my men in position for spending the night. I sent out another regiment on the railroad, which was some distance on our right, and put one of my brigades near Waterman's battery, and Berdan's Regiment of Sharp-shooters on their left, with Griffin's brigade supporting Hazlitt's battery, and Butterfield's brigade in the rear of Griffin's, and in that way we passed the night" (C. R., 146, 147).

All this shows there was no retreat. General Sykes said his troops made close connection with General Morell's, and he himself was at Bethlehem Church, which was only the distance occupied by General Patrick's brigade to the rear of Sykes' former position.

And yet the court convicted General Porter of a shameful retreat, because a dispatch addressed to Generals McDowell and King announced an intention to withdraw to Manassas. There was no evidence of a retreat or withdrawing or being sent back introduced before the court-martial; but said he was going to the front to see what was passing, and would communicate with them. This is the dispatch:

AUGUST 29, 1862.

Generals MCDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back? I will communicate with you.

F. J. PORTER, *Major-General.*

The best way to establish his retreat was not to produce evidence of his *intention* to do so, but the communication which he promised, to show whether he retreated or not.

This intention was never carried out. The only evidence to support the idea was that of Capt. B. F. Smith and General Griffin, both of whom had no idea that any retrogade movement was a retreat. Captain Smith said he camped that night in the woods alongside
1327 of the branch railroad (near Manassas), but that he had charge of General Sykes' picket-line (C. R., 112–3), thus showing that he did not go any further than Bethlehem Church, where General Sykes says they camped.

General Griffin said:

He marched five miles from Manassas Junction when this order came down the road: "The order was carried by an orderly, and was stopped by Colonel Warren, who read it. We faced our command about immediately and started back. We were probably a mile and a half or two miles from the position referred to in my previous testimony as occupied by this battery."

After I had faced my brigade about, I rode ahead to General Morell, who had received the order, and asked him if he was going to attack. He replied in substance, "No; it is too late; and this order has been given under a wrong impression."

The order was to attack; that the enemy were retiring. General Griffin said his command spent the night in the place they then occupied. Let me observe that when General Griffin says his command passed the night in the place they then occupied, it shows that he had got back to his original position; so that there was no retreat. There was an advance, and nothing was effected. So that all that evidence falls to the ground by its own weight, unsupported.

Notwithstanding all the evidence before cited that there was no substantial variation in position that day, the court chose to found, solely upon this alleged retreat, the charge of disobedience to the joint order, and that, too, when none of the officers understood that there was anything like a retreat.

There was no room for a retreat between Dawkins' Branch and Bethlehem Church, and there was none.

No intelligent witness has sworn to anything like a retreat, or that such was his impression during any retrograde movement.

So much for the joint order; and General Porter is not guilty on the second specification of charge 1, and ought not to have been convicted of it.

I have not referred to the testimony as regards the presence of the enemy, taken from General Porter's skirmishers; and perhaps a brief allusion to that testimony may be proper. I think that the strongest evidence was the documentary evidence upon which I commented. Colonel Marshall testifies upon this investigation, at page 77:

A. I desired to obtain the strength of this enemy. This was a new phase of affairs. The reports coming in from my picket-line were very conflicting; some reported an army, some a brigade, some a division. I gave to Major Hyland the direction of finding out by sending to captains of companies for the information, he being the only field officer with me of that regiment that day. He returned and stated to me that I had better go in person myself. I then got off this dispatch. I recollect the reflection in my mind was that both of us might be killed, and General Morell would have no information of the enemy. I considered the duty I was then going upon a very dangerous one. After this dispatch was gotten off, I then went with Major Hyland, of the Thirteenth New York, and was conducted by him to a certain open space on the front of my picket-line; from this map, I suppose it was somewhere in this vicinity [northwest of Randall's]; crawling out some distance, so that I could look beyond this point of timber (if it is correct on this map) northwest. In this direction, perhaps a mile, I discovered a force, the right of which was resting on a timber that jutted on our front. I did not go far enough to see the whole of that line. Major Hyland had been there preceding me, and stated that the line went only a little distance beyond, and it was unsafe to go farther. We were continually being fired on by the enemy in this direction, and by some command in the direction of the Manassas Gap Railroad. We were cross-fired upon, besides a direct fire. I accepted his statement, and concluded it was best to return to my headquarters and report the state of affairs; that the enemy was drawn up in line of battle, in full view, and were infantry, and the line was a parallel to my position that I was occupying that day [Marshall's line being south of Charles Randall's]. I returned to my headquarters and made another more positive report.

Q. In writing?—A. In writing.

* * * * * * *

1328 Q. Coming to a different subject: About dusk, when you had your conversation with General Morell, and remonstrated against his making the attack which General Porter had ordered, where was he?—A. He was at his headquarters, on a line of battle that was formed and hid away near this road [Manassas and Gainesville], directly in advance of it, on the line of battle; appeared to be anxious for reports, &c., from me.

* * * * * * *

Q. You say that you told him that it was certain destruction to make the attack. Will you state the reason on which you formed that opinion?—A. The reasons were that there was a large enemy on my front. I cannot tell what they were. They were mostly hidden in the timber. Then, also, this new development of troops on my left—that fretted me. And, also, prior to going upon picket, I myself went off on my own hook; and when General Porter accompanied General McDowell, and made a recon-

naissance of that same timber, I saw them go into the timber and saw them returning. Upon their return, I returned to my command. In my observations that I made of that point to my left I saw a long line of dust, and I concluded that there was a large army, at least a corps, moving down toward our front. The consequence was, when I went upon picket I was prepared in my own mind to be received by a large force, and I was not mistaken. I found it just where I expected it to be from these observations made upon this hill.

He speaks of returning to his headquarters, and of his finding General Porter at Morell's headquarters looking very anxious—

and I made about the same remarks to him—

about the danger of attacking.

Lieutenant Stevenson (page 200, Court-Martial Record) testifies to riding from Reynolds's left over to his regiment, Colonel Marshall's. Lieutenant Stevenson saw 12,000 or 15,000 men. I have already commented in my address this morning upon what the Judge-Advocate-General thought of him and upon what the facts were; there were that number of men there; Stevenson, an eye-witness, was right and the Judge-Advocate-General in his closet was wrong.

Major Hyland testified (Court-Martial Record, page 175):

Q. Can you state about what force of the enemy took position in front and right of your regiment, as deployed in advance of General Morell's division on the 29th?—A. I could not state the number, but it appeared to be a very large force indeed.

Q. Can you state how many thousands, or divisions, or regiments?—A. I could not state the number of thousands or divisions. I judged from the movements, and from the commands given, that there was a very large force indeed; *probably a larger force than we had.*

Q. Did you report this force to General Porter or General Morell?—A. I reported to Colonel Marshall, my commanding officer.

Q. Do you think the force of which you have spoken was sufficient to have made a successful resistance to General Porter's entire corps?—A. I do.

Q. Do you base that opinion upon the supposition that the enemy had there more than 10,000 or 12,000 men?—A. I could not state the thousands. But, from what information I had, and from what I could get from the other officers, I thought their force was very heavy indeed. I should think there were probably 10,000 troops in front of us, judging by the columns of dust that I also saw coming from the same direction.

The statement of this witness' *opinions* as to the number of troops before them is not to be the statement that binds General Porter, except that there was a large force there. If General Porter knew from his inspection of telegrams, or from statements of General Pope, or from having received information from spies that Longstreet's force was larger, his information was correct enough. He cannot be reduced by this witness' suppositions as to the strength of the force. But when these witnesses came back to him and told him their ideas, or when they sent back reports as to what force was in front of them, with his knowledge added, it brings information to his mind that 25,000 troops were in front of him.

1329 Major Hyland also testified (page 115 Board Record):

A. I sent word to General Griffin, asking him if he would put some shells over our heads, and he did, and immediately I could hear the commands of the enemy to fall into line, and considerable cursing and swearing and wanting to know what they were afraid of, and why they didn't center dress. It didn't seem as if they were over a hundred and fifty yards in my advance.

That enemy was not back of Pageland Lane.

Lieutenant Davis, Twenty-second Massachusetts (Board Record, page 392), testifies:

The two regiments that were sent out, the Thirteenth New York and Twenty-second Massachusetts, were considered very good regiments. The Thirteenth New York was commanded by a Regular Army officer, Colonel Marshall. I went out with those regiments to the front.

Q. Did you remain there during the day?—A. I was there at intervals all day.

Q. With thisskirmish-line?—A. Yes; I went out and in a great many times during that day. I took those men out. I was afraid to go down into this road for fear the enemy would see us. So we crossed the Manassas and Gainesville road, and went in to the left. There were some troops in here not in position, and a battery drawn up in field. I marched them down to the left. There was no house where I was.

It seems that Deats' was not then built, according to General Warren.

The Thirteenth New York took position somewhere on this stream [Dawkins' Branch]; the Twenty-second Massachusetts on the right. Colonel Marshall, when he first arrived there, was convinced that there was a strong force in our front. In going back to General Morell I met General Porter on the road and communicated that fact to him.

Q. About what time was that? Can you form any idea?—A. I should say about midday.

Q. What was it that you stated to General Porter?—A. I stated to him that Colonel Marshall reported that there was a very heavy force in the woods in his front. That was the first time. I went immediately out again. I could not swear whether it was the second or third time that I went out that I took the two men and went forward crawling on hands and knees.

Q. How far up?—A. As near as I can judge within 300 yards of the enemy's line of battle—so near that I could hear them giving orders. These men I had with me got up behind a post and looked over the post and counted five guns very near the road. We tried and tried for a long time to see if we could not count more, because we knew from the noise we heard that there must have been more guns there.

Q. Near which road?—A. Manassas and Gainesville.

Q. Did they seem to be in position to command that road?—A. Yes, sir.

Q. How often did you communicate yourself with General Morell or General Porter that day, according to your best recollection?—A. I went out a great many times during the day. I cannot tell how long we might have staid out. One time when I went out the colonel was very anxious for me to remain with him. He said he thought there was a heavy force moving around to our left. He could hear them but could not see them. Every time I went out I went to the two regiments to see what the commandants of the regiments had to say. While I was with Major Burt we could see this force moving around. He asked me in case they were flanked what he should do. I told him to fall back. I told him I would go to General Morell and get authority from him. I went to General Morell, and I think the general then sent one of his staff officers out. I asked Colonel Marshall to put it down in writing.

* * * * * * *

When I met General Porter on the road I reported to him and did not go to General Morell after reporting to General Porter.

Q. How often did you see General Porter?—A. A great many times; further in advance than our troops had been on that road.

Q. You saw him down in the front?—A. Yes, sir.

Q. Did you hear anything that indicated a fight as going on over towards
1330 Groveton that day?—A. Nothing but artillery.

Q. Did you hear any infantry fire?—A. No, sir; might have heard a few stray picket shots, but no battle, no infantry fire of any account.

Q. Was the impression made on your mind that there was a Confederate force in your front? If so, what force?—A. When I first went out I had not, but later in the day I learned that it was Longstreet's forces. I cannot say how I learned it. I was certain there was a force in our front, because I saw and heard them myself.

Q. You were certain that was a very heavy force?—A. Yes; I listened and heard their formation as they came into the woods.

That is rather explicit.

Slater testifies—he was a volunteer witness called by the government, he being in the Thirteenth New York:

There was occasional firing at the front. We could hear, where we were back from the timber, the noise and hurly-burly of the passage of large bodies of troops. We staid there until about two o'clock that night, the skirmishers some distance in front of us. We could hear occasional firing, and messages were brought backwards and forwards. About two o'clock we started for Groveton.

Q. How long did that battery remain on the hill by the white house?—A. I should suppose it might have been half an hour perhaps. They fired quite a number of shell pretty lively. There was some skirmishing between the two parties, because I know that several bullets from their carbines cut through our regiment pretty lively when we were going across the open towards the timber.

Q. Can you indicate on the map the position of reserve that your regiment was

placed in that day?—A. I don't know that I can indicate quickly, but I can say this, that all that was connected with my brigade; we crossed up in this direction by Carraco's.

Q. After a portion had been deployed where did the reserve take up position?—A. They were directly on the crest of the hill—not exactly on the crest; it was sloping.

Q. The reserve of your regiment?—A. We were perhaps 400 or 500 yards—maybe a little more—from the timber, down out to the lowest point of this hollow. It had been a meadow or flooded field. It was some distance beyond where we had originally stopped, and I suppose we were 400 or 500 or 600 yards in rear of the skirmish-line, and perhaps 700 or 800 yards from the timber. We could hear distinctly the noise made by the passage through the timber.

Here is the reference to the fact that the dust was coming down three roads by Lieutenant Davis:

General Porter was at that time observing lines of dust from the enemy, and I handed him my field-glass. He could distinctly see the dust as it rose. They were marching down three roads.

There is going to be, no doubt, an attempt on the part of the government to prove that this was nothing but cavalry in front, and there were questions to test that, as to whether the skirmishers of the Confederate lines were armed with carbines or not. The testimony on the part of Williams was that some of Drayton's brigade were deployed as skirmishers, as well as cavalry. Hear what Bouton says:

As far as I could judge they were infantry. Shots were exchanged repeatedly during the day and night. We remained on that post as skirmishers all night.

Well, Robertson says he does not know whether his men were skirmishing at that particular point or not. Bouton says:

A. Yes; we could distinctly hear the movements of wagons. The general movement we heard particularly at night after things became quiet. We were there all night in line. Then we could hear very distinctly.

Well, they were moving to and fro. There is testimony showing that they did not stay all the time in one place upon that line.

James H. Wilson, also a government witness, from the Thirteenth New York (page 370), says:

Q. At what time did you go out on the skirmish-line?—A. I don't recollect the hour. I should say it was between ten and twelve some time.

1331 Q. Who were opposed to you on that skirmish-line?—A. We understood it was Longstreet's corps. I could not swear to that.

Q. Did you know at the time?—A. It was so understood at the time.

Q. How long did you continue on the skirmish-line?—A. I think until next morning.

I shall not go into an analysis of the evidence as to the firing of those shots into General Porter's ranks. I do not think it is very material. It is enough to say that there is only one witness who speaks of more than a few shots being fired, and he said it in an off-hand manner. He said he thought there were some fifteen or twenty shots at one time, and the others all say there were only three or four. Probably that witness was mistaken. I introduce these extracts from the testimony of these witnesses simply to show that General Porter's previous knowledge was confirmed in the afternoon after the leaving of General McDowell. His knowledge that Longstreet was there was confirmed by these reports.

I NOW ARRIVE AT A CONSIDERATION OF SPECIFICATIONS SECOND AND THIRD OF CHARGE SECOND.

Specification third of the second charge—misconduct in face of the enemy—treats of the same general subject of retreating and failing to attack, and I have dwelt upon it sufficiently to show that he was not guilty of that charge, and was improperly convicted upon it.

Specification second of the second charge—misconduct in face of the enemy—needs but brief treatment, and I shall speak of it now, and not in its order.

General Porter is charged therein of being "within sound of the guns, in the presence of the enemy, and between Manassas and the field of battle pending between the Union and rebel forces." So far it is true; but when it charges him with a "knowledge that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed," there is a great error, for he did not hear musketry firing until late at night.

This is testified to by General Morell, General Sykes, General Butterfield, General Warren, Colonel Buchanan, Colonel Locke, Colonel Marshall, Majors Earle and Hyland, Lieutenants Randol, Baker, Weld, Davis, and many others; only two or three government witnesses, who, as for instance Gecke, showed their lack of memory, testified to anything like musketry firing before sunset. General Reynolds, two miles and a half nearer the scene of action, did not hear musketry until evening. His testimony was given just after the action two or three months, when his memory would be more distinct than that of the intelligent witness from New York who swore sixteen years afterwards. General Longstreet did not hear it until sunset; nor Col. Charles Marshall, of General Lee's staff; nor General Beverly Robertson, nor Colonel Blackford, nor Major Williams, nor Lieutenant Mitchell—all the Southern army, many of them nearer any source of sound than General Porter.

Nor did the commanding officers of King's and Ricketts' divisions, as they marched all that afternoon from Manassas Junction, in almost a continuous column, to the stone house near Pope's headquarters, hear any musketry in volume until they came to the actual field, or until sunset.

The Recorder has introduced ample evidence that musketry fire was plainly heard by those approaching from Bull Run and Centreville, but as Colonel Blackford says, that can be accounted for by the fact
1332 that the ground sloped in that direction, and so the sound rolled off in that way, but not over the hills and woods to General Porter. Has any evidence been introduced as to which way the wind blew? Not at all. We all know that if the wind was blowing in a certain direction it could blow the sound away perfectly well; and we have a right to conclude that, if there was any wind, it was blowing away from General Porter.

It is true that the cannons were heard, but that by no means showed there was a battle going on, for no battle of consequence had been fought since that of Cedar Mountain, August 9, 1862, and yet the cannon had been heard all the way up from Fredericksburg. General McDowell himself says before you that while with General Porter he could not tell the nature of the contest from the sound of the guns. Now we know that there was a furious cannonading going on about that time between Lieutenant Benjamin and these nineteen or twenty guns.

Nor do either General Pope or General McDowell pretend to have sent him any word about the severity of the battle, nor has it been shown that he got any sufficient knowledge about it.

The Recorder will, of course, say that the use of the word "*battle*" in some of General Porter's dispatches shows that he knew a severe fight was going on. That does not follow. A cannonade may be a *battle* as well as a regular engagement may be a battle.

I will now allude to the cavalryman (Bond) who was sent over the

field to Manassas Junction to get some forage. He says that he met General Porter, and that the petitioner asked him, "How goes the battle?" But his description of General Porter's appearance was farcical; for he says that General Porter wore a slouch hat (he would not be positive about that, but it was a hat); that he wore a mustache and no beard; that he wore a major-general's uniform; all of which statements were controverted by General Porter's own military family, his aids, who testified to the effect that he wore a cap and a full beard, and a brigadier-general's uniform; so that the testimony of the witness Bond falls entirely to the ground.

WHAT ACTION IN THE NATURE OF A BATTLE WAS THERE AT GROVETON, VA., AUGUST 29, 1862?

And now, adopting *one* of the admissions of Maj. Gen. John Pope, commanding the Army of Virginia, we stated before you that there was not a severe *general* engagement in the neighborhood of Groveton on the 29th day of August, 1862, and the Recorder calls the assertion astonishing, and produces numerous witnesses to prove there was a severe general engagement. It was not necessarily a part of our case. In this, if he has succeeded in proving it, he has not damaged us. General Porter not knowing it, it is not essential to prove our assertions. The Recorder, therefore, has simply brought forward these witnesses to defend Pope against himself, for he makes the following two different statements:

The troops were accordingly suffered to rest in their positions and to resupply themselves with ammunition. FROM TWELVE O'CLOCK UNTIL FOUR, VERY SEVERE SKIRMISHES OCCURRED CONSTANTLY AT VARIOUS POINTS ON OUR LINE, AND WERE BROUGHT ON AT EVERY INDICATION THAT THE ENEMY MADE OF A DISPOSITION TO RETREAT.

* * * * * * *

Why, he just wanted to hold them there; he wanted to get them all together, and then strike the blow.

ABOUT HALF PAST FIVE O'CLOCK, when General Porter should have been coming into action, in compliance with this order, I DIRECTED GENERALS HEINTZELMAN AND RENO TO ASSAULT THE LEFT OF THE ENEMY.

1333 Showing that he did not consider at that time that there had been a severe engagement during these hours until he directed Reno and Heintzelman to assault the left of the enemy.

This is taken from General Pope's report of January 27, 1863, reprinted in his report to the Committee on the Conduct of the War, in 1865, and therefore more like the result of mature thought than the following excited declaration taken from his dispatch from the field:

We fought a terrific battle here yesterday with the combined forces of the enemy, which lasted with continuous fury from daylight till dark, by which time the enemy was driven from the field, which we now occupy.

Which are we to believe? Well, we took that statement which agreed with General Carl Schurz, then under General Sigel, and now Secretary of the Interior. I may state that the Recorder did, as he has a perfect right to do, stop short in quoting from the report of General Schurz, just at the point where I now begin. General Schurz in his official report declared:

[Extract from Report of General Carl Schurz, p. 112 of General Pope's Report.]

Heavy reinforcements were constantly arriving and led to the front. IF ALL THESE FORCES, INSTEAD OF BEING FRITTERED AWAY IN ISOLATED EFFORTS—

This does not sound like a general engagement—

HAD CO-OPERATED WITH EACH OTHER AT ANY ONE MOMENT, AFTER A COMMON PLAN, THE RESULT OF THE DAY WOULD HAVE BEEN FAR GREATER THAN THE MERE RETAKING AND OCCUPATION OF THE GROUND WE HAD ALREADY TAKEN AND OCCUPIED IN THE MORNING, AND WHICH IN THE AFTERNOON WAS, FOR A SHORT TIME AT LEAST, LOST AGAIN. My men, with very few exceptions, behaved well. The line my weak regiments had to take and to hold was so extensive that double the number of troops would, under ordinary circumstances, be hardly considered sufficient to perform the task. That they did perform it for many hours, without flinching, until the arrival of ample reinforcements made their relief possible, speaks well for their courage and intrepidity.

These extracts from reports are supported by the opinions of General Heintzelman and of Colonel Douglas, of General Jackson's staff, an eye-witness.

These witnesses had better opportunities than those engaged in fighting of judging whether the fighting was in the nature of spirited brigade assaults or of a general engagement along the whole line.

I cannot find that at any one time there were two divisions engaged between twelve and five o'clock. It is quite true that there were heavy losses that day, and severe fighting that day, and gallant assaults and stubborn resistance on both sides, but no general engagement along the whole line.

And even if there was, the knowledge has never been brought home to General Porter.

I have not deemed this question of any great importance, and am only induced to speak of it because it has been made so great a point by the Recorder, who has examined about thirty witnesses chiefly, if not altogether, on this subject. Clearly, as General Porter had no word sent to him as to any severe battle raging at Groveton, and there being any need of his assistance and having no knowledge that anything more than an artillery contest was going on, he could not be blamed for not going to the assistance of the Union forces at Groveton, nor for not attacking the forces in his own front, particularly when either movement would have been a military blunder, as I have elsewhere maintained.

(General Porter's mistaken impression that our troops were retiring was not of long duration, as elsewhere explained.)

1334 I have made a very careful examination of the evidence in regard to this question and arrive at the following conclusions:

In the early morning and until between 9 and 10 a. m., the only Union troops on that ground were Reynolds' division of McDowell's corps on the extreme left, south of the Warrenton turnpike, and next between Reynolds' and the turnpike came Schenck's division of Sigel's corps; north of Groveton and the turnpike were the rest of Sigel's corps. Schenck's division numbered some 2,000 or 2,500 men, and the rest of Sigel's corps some 5,500 to 6,000 men.

Neither Reynolds nor Schenck, so far as regards their infantry, were engaged in any fight to speak of except skirmishes on the day under consideration.

And until 11 or 12, the only troops who did fight (some others being in line of battle, but not under any severe fire, if under any at all), were General Sigel's, to wit, Milroy's Independent Brigade of four regiments, Schurz's division of "two small brigades," as Sigel calls them, of six regiments, and one regiment of Steinwehr's division; certainly not more than 5,000 men, if that number, for out of Sigel's 8,000 men, Schenck's 2,000 or 2,500 men, the cavalry and two or three regiments of Steinwehr's were not in action.

About 6 o'clock a. m. the infantry were ordered to advance, and pushing out their skirmish line, an advance was made, the enemy giving way, but no hard fighting seems to have occurred until about 8 a. m.

The testimony and official reports as to the time of this assault or engagement varies. General Sigel (B. R., 940) puts it at six or a little after; Major Duval (B. R., 860), at eight, and so do the reports of Colonel Kovacs (B. R., 513) and Braun (B. R., 513). Major Deems, of General Sigel's staff, thinks it was at nine (B. R., 839).

The particularity of the reports of Kovacs and Braun induces me to believe that eight o'clock is the right hour.

During this fight, it seems that General Milroy sent in two of his regiments to aid General Schurz who was further aided by Twenty-ninth New York, from General Steinwehr, thus making nine regiments who were engaged in this contest, but I gather that of these nine only eight were engaged at one time; one regiment being kept in reserve and relieving others from time to time.

When General Schurz ceased fighting for the time being, General Milroy sent in his other two regiments.

About 10½ o'clock another sharp fight was had, the enemy attacking General Schurz, who seems to have had two small regiments sent to him. These two small regiments broke and were thrown out of the woods; then all of Schurz's troops seem to have been engaged, and probably Milroy's also.

These two contests were carried on with great vigor, and resulted in a loss of about 1,400 or 1,500 men sustained by General Sigel's right wing. Intervening the chief combats, there was fighting in line of battle.

General Kearney had arrived about nine or half past nine, taking position on the extreme right, and was requested by General Sigel to attack in conjunction with him, but he afforded him no aid in that manner, as General Schurz and General Heintzelman say in their reports, the latter being Kearney's commanding general. Nor did General Kearney really take any part in the fighting worth mention until late in the day, as will appear hereafter.

From some evidence I infer that one or two of his regiments
1335 during the day may have fired at the enemy from line of battle, but were not in very close contact.

General Hooker's division—Heintzelman's corps—arrived about 11 a. m., according to General Heintzelman's diary (B. R., 610). Carr's brigade, of six regiments, then supported Sigel's batteries for an hour; then his Sixth and Seventh New Jersey Regiments were put in to relieve two regiments of General Schurz.

At about two o'clock General Schurz retired his exhausted troops, and remained out of the action the rest of that day.

Thereupon Carr's whole brigade, of six regiments, became engaged, being relieved in turn, between three and four o'clock, by Colonel Taylor's (Excelsior) Brigade, of five regiments, numbering about 800 men, and a part of General Reno's troops, the number of which is unknown.

There was no charge made either by or against General Carr's brigade; but his troops stood sheltered by the forest, and the rebels by the railroad embankment, and fired at each other (Carr, B. R., p. 838).

In the mean time, about 3½ o'clock, General Grover had attacked, with his brigade of five regiments, 2,000 men, and had fought about twenty minutes, losing 486 men in his spirited assault.

This assault does not seem to have been connected with that of any other troops, unless General Milroy assisted in it; but I am uncertain whether he fought with Carr or with Grover.

Taylor's and Reno's attack seems to have been unconnected with

Grover's, and certainly General Kearney's attack, with eight regiments (according to General Mindil, his assistant adjutant-general) at about five o'clock, was an isolated attack on the extreme right.

Two regiments of Stevens' division (Reno) attacked, as the son of General Stevens affirms, alone towards dark and after Kearney.

At 6¼ p. m., King's division attacked at Groveton, and fought until dark.

The amount of fighting done by General Reno's troops, and the number of regiments under him, I cannot determine.

There is no official report of his actions to be had, and I have been unable to get any adequate information about his numbers and movements.

From the testimony of Stevens and Sigel I infer that General Stevens had command of one division of three brigades—seven regiments. One brigade, of two regiments, numbered 800 men.

General Reno had a part of another division under his immediate command.

Arriving between eleven and twelve, he could not have engaged to any great extent, for General Pope speaks of the actions between twelve and four as "severe skirmishes."

I presume he did assist to some extent.

Where the witnesses vary as to their statements of hours, I have carefully compared them with General Heintzelman's diary, made on the spot, and have taken those statements that are most consistent with it.

General Porter and his counsel have never desired to be understood as saying that there was no fighting on that day, for there certainly were gallant onsets and determined repulses of attacks requiring great bravery, resulting in heavy losses, and doing honor to the character of the American soldier.

Nor have they desired to belittle the severity of the various contests in the slightest degree. Nor yet is it their province to criticise
1336 the actions of the several generals commanding. They only state, and are supported in their statements by the testimony and statements of officers competent to judge, that the contests of the 29th were *not a general engagement along the whole line at once*, but were a series of attacks by a brigade or two brigades, or a division at a time; there being, probably, not more than, and often not as many as, 5,000 men engaged at any one time.

There certainly was no "battle lasting with continuous fury from daylight until" 8 o'clock a. m., four hours, as has been shown, and there was no battle lasting with continuous fury from twelve until four, another four hours, for General Pope says thus: "From twelve o'clock until four very severe skirmishes occurred constantly at various points on our line, and were brought on at every indication that the enemy made of a disposition to retreat." (General Pope's Report of January 27, 1863.) These words show there was only fighting in spurts, and no struggle altogether along the whole line.

We thus have eight hours in which there was no general engagement, and we may well add the four hours between 8 a. m. and 12 m., for during that time only Milroy, Schurz, and one regiment of Steinwehr were fighting heavily—all the rest of Pope's army being *en route* for the field, or deploying or occupying strategic positions, only 5,000 men, if so many, being engaged.

We are concerned, then, simply with the hours between 4 and 8 o'clock p. m.: the contest before twelve before General Porter was deployed at Dawkins' Branch, and he being then under General McDowell, not con-

cerning him at all; nor yet the contest between twelve and four described by General Pope as "severe skirmishes."

From four to six we find that, actually for some reason or other, under General Pope's own eye, only 5,000 men at most were engaged at one time.

His whole army, except Banks' and Porter's corps and Ricketts' division, was then on the field of Groveton.

If General Porter had received his order to attack at 6 p. m., he would not, according to the testimony of Col. T. C. H. Smith, of Pope's staff, have been able to attack until eight o'clock—at dark.

If General Porter had attacked between 4 and 6 p. m., his attack would have been an isolated one, and in the highest degree imprudent, for he knew of no general attack at that time and there was none.

General Heintzelman says the engagements that afternoon were "just spurts," by brigades and regiments. General Duval, an onlooker, says there was no general engagement. General Stevens says the attacks were half an hour apart and were unsupported.

Those other witnesses who were engaged in battle could not judge of anything at the time of the combat, except what they themselves were engaged in.

Generals Heintzelman and Schurz in their reports both censure General Kearney for not attacking when ordered.

General Mindil says Kearney did not support Hooker.

Take those witnesses who were not actually engaged in fighting and had an opportunity to observe what their neighbors were doing, and what they say supports the statement that *there was no general engagement on the 29th of August*, 1862.

General Porter's failure all day to bring his troops on to the field, with which he is charged, never was a failure. They were on the field opposite Longstreet's 25,000 men, holding them away from Pope. That

1337 he retreated and fell back shamefully or otherwise from the advancing enemy I have shown to be absolutely false. That he did attempt to give them battle is shown by his message through Colonel Locke to King, and his deployment of forces and march of Griffin to the right after McDowell rode away, and his enforced abstinence from attack was caused by General McDowell's own action in taking King and Ricketts away to the right.

I have also proven that General Porter did know what forces were in front of him, from which he did not retreat.

Thus is Specification 2 of Charge 2 swept away as amply disproven, both on the first trial and on this inquiry. And General Fitz-John Porter was improperly convicted on that specification. Thus there are but two other specifications to consider, and these both involve disobedience to the 4.30 order.

Charge 1st.—Violation of the 9th Article of War.

Specification 3d.—In this, that the said Major-General Porter, having been in front of the enemy during the battle of Manassas, on Friday, the 29th day of August, 1862, did on that day receive from Major-General John Pope, his superior and commanding officer, a lawful order in the following letters and figures, to wit:

Then follows the order of 4.30 p. m.

Which said order the said Major-General Porter did then and there disobey, and did fail to push forward his forces into action either on the enemy's flank or rear, and in all other respects did fail to obey said order. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

CHARGE 2D.—VIOLATION OF THE 52D ARTICLE OF WAR.

Specification 1st.—In this, that the said Major-General Fitz-John Porter, during the battle of Manassas, on Friday, the 29th day of August, 1862, and while within sight of the field, and in full hearing of its artillery, did receive from Major-General John Pope, his superior and commanding officer, a lawful order to attack the enemy, in the following figures and letters, to wit:

Then follows the order of 4.30 p. m.

Which said order the said Major-General Porter did then and there shamefully disobey, and did retreat from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was then ordered to make to secure a decisive victory, and to capture the enemy's army, a result which must have followed from said flank attack had it been made by the said General Porter in compliance with the said order, which he so shamefully disobeyed. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862.

But let me, for the sake of convenience, bring these two specification charges down to one charge—that of disobedience, pure and simple, without any incumbering adjectives or sentences.

After having proved, as we have done, the force and position of the enemy, and knowing as we all do that the attacked have great advantages over the attacking, especially when this attacking force has to sweep up a hill or slope of a thousand yards in an open field in plain sight before reaching the elevated position of the enemy, where they were masked by woods, where they could have been riddled by enfilading fires from the railroad to the right or from the road beyond that, or from the woods to the left—we need not the opinions even of Generals Lee, Longstreet, Wilcox, Robertson, Colonel Marshall, and others of the enemy, to make it evident that General Porter with his nine or ten thousand men could not have successfully attacked, and could not have drawn away any of the enemy's forces from in front of General Pope, for there were three divisions of the enemy practically disengaged all day; Wilcox's, Jones', and Kemper's—numbering some 18,000 men—ready to resist any attack by him.

1338 So that General Porter's attack could not have secured a decisive victory, nor could it, therefore, have resulted in the capture of the enemy's army. The court, in sustaining that charge, sustained the assertion that victory and capture of the enemy's army was a result which must have followed if General Porter had attacked in obedience to the order of 4.30 p. m.!

We know that this opinion is not just, and that such a result could not have followed. Who so poor as to do honor to that decision now? Not even General Porter's bitterest enemy. The rest of that specification is a mere reiteration of the charge of shameful retreat and failure to go to the aid of the troops under General Pope, which I have elsewhere considered. And I may here say that General Porter had no opportunity to go toward Groveton. The only available road, so far as he knew it, was over the Sudley Springs road, and that was blocked by King and Ricketts, who occupied it all that afternoon, the latter not reaching the Warrenton turnpike until late in the evening nor the former until four o'clock.

General Porter could not go over along Dawkins' Branch to the right, for all agree that such a march, exposing him to an enfilading fire, would have been ruinous and done no good whatever. He could not go through the dense woods here about Five Forks. He could not go at all.

We have then but one specification to consider, and that is that he disobeyed the order of 4.30 p. m., issued to him by General Pope, five miles from him at Buck Hill, on the Warrenton turnpike.

Thus are the enemies of a brave man and a skillful, patriotic, merciful general, reduced to the necessity of saying that he received an order and must obey it! It is true that it was issued in utter misconception of all facts; it is true that General Porter was thought to be where the enemy really was, back of Hampton Cole's, a mile in advance of his actual position on Dawkins' Branch; it is true that Generals Pope, McDowell, and Roberts, and Colonel Smith, "*four intelligent and reliable witnesses*," were all mistaken on this point; it is true that the Judge-Advocate-General, the court, and the President must all have adopted this idea; it is true that General Porter's troops did not flank the enemy, but that they flanked him; it is true that he knew it; it is true that it was thought that there was no enemy, where, indeed, twenty-five thousand strong, determined, armed men eagerly awaited the word of their general to spring to the attack, and not to the retreat; that they were ready to beat back the nine or ten thousand men attacking them; it is true that this little force were only nine or ten thousand men, and not, as was supposed, some twelve or fifteen thousand men; it is true that his line of march did not bring him in on the enemy's flank; it is true that he could not attack the enemy's rear; it is true that he could not keep his right in communication with Reynolds; it is true that it would have taken two hours, according to the confession of that "*intelligent*" witness Colonel Smith, who once *reliably* stated that it would take an hour for General Porter to form and reach the enemy; it is true that General Porter knew of the presence of the enemy as well as if he had made, early in the day, an attack, tentative or otherwise; it is true that the result would have been ruinous; that a murderous fire would have been poured into his devoted brigades, that the air would have been filled with the groans of those dying an unavailing death; it is true that the attack could have had no such effect as has been graphically described by our "*intelligent and reliable witness*" Colonel Smith, which was as follows:

> Far, and back from the front, they had a line of retreat toward Thoroughfare Gap, toward their main force. The direction of a flank attack moving on the road
> 1339 from Manassas to Gainesville, and then moving in upon their flank, was such as to cut off their line of retreat. We drove them off the ground as it was. I believe that if the attack had been made on their flank at that time, between five and six o'clock, exhausted as they were by the fighting through the day, it would have made the defeat a rout, by striking them on their line of retreat toward their main force, and rolling them up on Bull Run and the east of the Gum Spring road, and so on in that direction.

It is true that the gallant Fifth Corps, who next day bravely stood their ground, and with their muskets at the breasts of Longstreet's force kept back his victorious legions from further advance against the wearied and exhausted Army of Virginia—it is true that it would have been almost annihilated, and yet—and yet the implacable enemy, persecutor, prosecutor, and accuser for sixteen long years, of this blameless soldier, admitting by his absence all the facts I have named, shouts from the far distant prairies of Kansas, "There is the 4.30 order; he received it at 5.30 o'clock; he disobeyed it; he was rightly convicted. I consider it your duty to indorse my dutiful action in bringing him to justice!"

And thus, gentlemen, the government case has at last but one poor brittle glass leg to stand upon. But it is not true that General Porter received that order at 5.30, for it was at least one hour later, at sundown—6.30 o'clock; and if it should take him two hours to reach the enemy, he would have had to attack in darkness, at the time the fighting ceased elsewhere.

GENERAL PORTER DID NOT DISOBEY THE 4.30 ORDER; DID NOT RECEIVE IT TILL 6.30 O'CLOCK; AND IS NOT GUILTY OF THE SOLE REMAINING CHARGE OF DISOBEDIENCE SET FORTH IN SPECIFICATION THIRD, CHARGE FIRST, AND IN SPECIFICATION FIRST, CHARGE SECOND.

The following is the order General Porter is charged with disobeying:

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Your line of march brings you in on the enemy's flank. I desire you to push forward into action at once on the enemy's right flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but he can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commanding.

Major-General PORTER.

Before this Board General McDowell has, after many years, produced the following (B. R., 810) dispatch, which, if produced on the original trial, would probably have caused General Porter's acquittal, and it was General McDowell's duty to have produced it then:

GENERAL MCDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water and am out of provision. Have lost a few men from infantry firing.

F. J. PORTER,
Major-General Volunteers.

Aug. 29—6 p. m.

This dispatch, in connection with the evidence of Captain Pope and the orderly, is ample proof that General Porter did not receive that order till after six at least, because the witnesses have proved
1340 that General Porter requested them to leave messengers with him, being some of the orderlies who came with Captain Pope.

This 6 p. m. dispatch says, "Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs, whether you retire or not. I cannot get water and am out of provision." This shows that the few orderlies left by Captain Pope could not have been present when this dispatch was written. Captain Pope says that he remained talking with General Porter fifteen or twenty minutes, but Captain Pope has had to lengthen the time within which he carried that order, and why should he not equally lengthen the time of his conversation with General Porter and agree with the testimony of the orderly Duffee, who says that he talked with General Porter from twenty minutes to half an hour! So that at the time this order was written Captain Pope must have been present if he got there at half-past five with those orderlies, or if he had left he had but just gone, leaving those orderlies behind him at General Porter's request.

Now, there was no reason why General Porter should state an untruth in this dispatch. He did not dream of being court-martialed; he was not "preparing his case" then.

But he has, since!

Another internal evidence in this dispatch that the general had not

received the 4.30 order as late as 6 o'clock, is that he asks General McDowell to let him know his designs—a thing that would be absolutely needless were he in possession of the order which it is claimed he disobeyed, for that order shows conclusively that it was the intention of General Pope that General Porter should engage with the right flank of the enemy, while the whole Union line should engage him in front. The "designs" of McDowell, unless he was a traitor to his commander-in-chief, were the designs of General Pope, and they were to attack. What need was there of General Porter asking him his designs? McDowell was not commander-in-chief.

There can be no pretense, there has been none, that General Porter did not order General Morell to attack. What reason, therefore, if he was in possession of the 4.30 order at the time the 6 p. m. dispatch was written, should he have for asking General McDowell's designs, and indicating, in connection with this dispatch, also produced by General McDowell, his intention to retire on account of the lack of provisions, if it was left to him?

GENERAL MCDOWELL OR KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
Major-General Volunteers.

"For food and water"! *There* is the cause for the "shameful retreat"—for food and water! And we have testimony that there was only a box of crackers for one regiment!

It was not left to him; he was ordered to attack; there was no room for him to retreat; he did not intend to retreat. He ordered an advance by Morell, and riding to the front to carry out that order, came to the conclusion that it was entirely impossible, because it was too late.

Thus Captain Pope and Orderly Duffee are entirely overwhelmed in their conjectural evidence by this positive proof that they could not have got there at 6 o'clock.

Inasmuch as they are thus proven to be mistaken in their calcu-
1341 lation, why are not the witnesses who saw the delivery of that order, and all of them placed it as late as sundown, more likely to be correct than these men who have made such a palpable mistake, Captain Pope first affirming that it was five o'clock when he delivered the order, then taking it back on the cross-examination on the original trial, and saying it was about five, meaning a few minutes after, and now, here before you, he changes the time occupied in carrying that order from thirty minutes to three-quarters of an hour, thereby bringing himself more in accordance with Orderly Duffee, who, with a better calculation of the distance, thinking it five miles where Captain Pope thought it three, placed the time of delivery at 5.30.

The truth is, these men do not know the time when they started; they have no nice calculation of the time it took them to carry it, and they did not arrive till the time when five witnesses on the old trial said they did, in which these five witnesses are now corroborated on this trial by the evidence of Lieutenant Randol.

In addition to this showing by convincing proof, we have the confessions of Captain Pope, or rather not the confessions, for he had no idea that he should ever be called to answer for these statements.

We have, then, the admissions of Captain Pope to his comrades in

arms, Colonel Moale and Lieutenant Jones, as follows: According to Colonel Moale:

Answer. That while *en route* to General Porter with his order he got lost; that he got five or six miles on the wrong road, or something of that kind; that he got lost in delivering the order, and he was about one or two hours in getting to him—I don't know whether it was over or under two hours—and when he reached General Porter it was near dark. I recollect that distinctly.

And according to Lieutenant Jones:

Answer. My recollection is that he said he was directed to carry an order from General Pope to General Porter, and that in going from one headquarters to another he got on to a road and traveled it for some distance until some women or children told him that if he wanted to go in a certain direction he was on the wrong road; also, to the best of my recollection, he said in my presence that in carrying that order he came out through the woods on a hill or eminence and saw rebel troops—saw a large body of rebel troops—and, therefore, turned back from that direction and went in ome other direction. I could not say that he said these words exactly, but that is the substance of it.

It is true that Captain Pope endeavors to explain away these admissions, but I submit that these admissions were made in a spirit of truth, and the corrections made in the spirit of endeavor to bring himself right before the world. What need, then, to comment upon the incidents of the journey of these witnesses from General Pope's headquarters to General Porter's headquarters, by Bethlehem Church? What need to say that since they have been enlightened by the opening address, and the comments of the witnesses for the petitioner, as to the fact that their evidence shows that they could not have traveled a direct road, and after they had gone to the battlefield and reconciled their memories to a route corresponding somewhat with that described by their evidence, they have come here and sworn that they proceeded up Chinn's Branch to the neighborhood of Chinn's Spring, then struck across to the opening in the woods to the southwest of Henry's, there met General McDowell, and had an interview with him, which must have lasted some little time; was directed by him to the point where he should find General Porter; and it is to be noticed that General McDowell had no reason to suppose that General Porter was not at his front on Dawkins' Branch, and therefore far to the right of the road which the messengers say they were traveling, and after leaving McDowell,
1342 as Duffee says, they took a road which either came around Wheeler's house or around Smith's house (he thinks they were both dilapidated) into the Sudley Springs road. But Captain Pope, whose memory is still more defective, says that he thinks he came out into the Sudley Springs road between Conrad's and Smith's, without reference to any dilapidated house; that they came down then straight to General Porter along the Sudley Springs road, and saw no soldiers whatever in the road, when we know at that period of time General Ricketts' command of eight thousand men must have been advancing up that road. There is no reason to suppose that General McDowell here or anywhere pointed to those men to come down this Sudley Springs road to General Porter. There is nothing to show that he knew that General Porter was there near Bethlehem Church. The examination of Captain Pope's own evidence, and that of Duffee on the court-martial, showed that they must have come some such route as that; and I caused two gentlemen to ride up that valley and trace the route as the evidence shows it must have been. Then Douglas Pope comes here and makes some slight conformity with what must have been the fact, and says he came *here*. Then he does not recollect whether he came out on the Sud-

ley Springs road opposite Conrad's or whether he came out by way of Smith's.

He does not know where he came.

Captain Pope made no personal inspection. He rode around in a wagon, and did not go down to see anything about the route—*unobservant and careless as his namesake on the court-martial.* He is dealing with the reputation of a major-general, and does not care what becomes of it! Colonel Ruggles pointed the direction in which General Porter was to be found. The testimony before you is that there was some cannonading up *here* [near Carrico's]. General Roberts, who was on General Pope's staff, and General Pope himself, were both sitting right by at the time, and Roberts says that he thought he saw the smoke of the guns of General Porter—and even the flash of those guns. Now, he could not see the flash of General Porter's guns. He could have seen the flash of guns up *here* [near Carrico's]. Therefore the pointing must have been in the direction of Carrico's.

Now, the witness Dyer, produced before this Board (a most ridiculous witness) says that General Ruggles pointed up *here* [indicating up Chinn's Branch and in a curved line back toward junction of Gainesville and Sudley Springs road, near Bethlehem Church]. I never saw a man point in a curve. I do not believe it can be done, any more than a cannon-ball can turn corners. (I quote the Emperor Louis Napoleon.)

Now, after making this examination of the testimony of Captain Pope and Orderly Duffee on the former trial, I considered it important enough to cause the route indicated by that evidence to be ridden over. Accordingly, Colonel Payne, who was perfectly familiar with that country, and a cavalry officer belonging to the so-called Black Horse Cavalry, and Mr. Leachman, who lived there upon that field, rode over the route indicated. Colonel Payne says:

Answer. This is the route, as I understand, indicated: From opposite the Matthews house down this road to the stone house; from there to Groveton; from Groveton down to Compton's lane, at its intersection with this road; and from this road to the Sudley Springs road; and from that point down to its junction with the Manassas and Gainesville road; and from there to Bethlehem Church.

Q. How long did that take you?—A. It took me on horseback 94 minutes.

Q. How long did it take you to go from the stone house over the same route?—A. It took me 86 minutes.

1343 Q. At what speed did you go?—A. I went at a brisk trot over all the road which I could safely get over at that pace. The road in parts is very bad indeed.

Did Douglass Pope and his orderly travel the Manassas-Sudley road at all?

I do not know.

If they did, they could not have avoided meeting General Ricketts' command.

Yet they say they met no soldiers until they saw General Porter's troops, and nevertheless they are positive they came on that road.

What does the Recorder do? Why, he very calmly makes General Ricketts, who was coming from Bristoe, and had probably received McDowell's orders to follow King up the Manassas-Sudley road—the Recorder, as I say, makes General Ricketts, with his 8,000 or 9,000 men, march past the Manassas-Sudley road up toward the Manassas Station, and then makes him turn off and march up to the battle-field by a road part of the way which is a new road to-day, made since the war.

Thus he turns 8,000 men out of their best road in order that they shall not meet and prove to be false two very uncertain witnesses, to say the least.

This new road is cut through dense woods, and over two streams large enough to be bridged. No one would think of traveling through the woods and swamp over an army road when they could travel over the county or Manassas-Sudley road.

I trust the Recorder will not circulate any map, if he makes one, which shall drag Ricketts out of the road he actually traveled and put him on this new road, which did not then exist.

There was no reason for Ricketts not to march up the Manassas-Sudley road, and he did so march. The Recorder's theory is especially strange, when General McDowell said before the court-martial (C. R. 82):

> Learning that General Ricketts' division was in the vicinity, I had it brought over to follow after King's division. King's and Ricketts' divisions, in the order named, *being on the same road* and following *the corps of General Porter*. I cannot tell the time of day nor the exact place when and where I received an order from General Pope addressed jointly to General Porter and myself; it was on the road leading from Manassas Junction to Gainesville.
>
> * * * * * * *
>
> The troops went by the Sudley Spring road from Bethlehem Church.

General Tower said he marched past the rear of a column of regulars, who were, of course, General Sykes' regulars, near Bethlehem Church, and, as General Porter's counsel, I have to state that he himself had an interview with General Ricketts near Bethlehem Church while Ricketts' troops were marching by. If the Recorder doubts it, he may call General Ricketts on that point.

And that proves which way they were going. Ricketts' force of 8,000 troops was going up that Sudley Springs road. Where did these orderlies go? Where did Captain Pope go? They did not come down that road (Sudley Springs road) if, as they say, they did not meet soldiers; they must have come somewhere or other after going up in that direction from the stone house by *here* [up Chinn's Branch to Compton's]. What a ridiculous statement has Dyer made! If *I* had had a memorandum of what Dyer said in a preliminary examination, and the memorandum had borne out the statements that he made here, *I* would not have examined him. *The Recorder might and has examined him.* He says that Colonel Ruggles told him that he would find General Porter on the road between
Bethlehem Church and the run; that General Pope was not *there*
1344 (with Ruggles, at headquarters on Buck Hill) when we know by
Duffee and by Captain Pope that he was there. He says that General Porter's location was thus particularly described, when General Pope says that he did not know where General Porter was, and when Colonel Ruggles did not know anything about where General Porter was except that he was on this road. The great danger of witnesses, after sixteen years, is that they are too particular in their statements. That man has testified to a falsehood and nothing else; especially when he says that General Porter when he got there was in a tent, while the testimony shows that he had no tent; especially when he says that he saw this little Bethlehem Church with a steeple, when it had been down in ruins six months before, and never had had a steeple or even a belfry; especially when he says that he came up to General Porter before he got to the railroad, when the testimony of Captain Pope, who was the nephew of his uncle and bound to tell all the truth in his favor that could be known, shows that they crossed the railroad before finding General Porter; and that testimony was given in December after the August in which these occurrences took place. O, that is beautiful! *My* memory would have been better than the Recorder's has proved to be, and I would not have examined him. Dyer says that is the way he

"*always thought of it.*" Was he present at the court-martial? Did he know that the court-martial was going on? Was he not fighting with his regiment? Was he communicated with by anybody? Can Orderly Duffee recollect that he was with him? No. The truth is, he never thought of it till here within a few weeks. Sixteen years ago he took an unimportant ride; he did not recollect anything of the order. Why does he now recollect so particularly? No; he does not recollect; it is imagination; and if it is not imagination, it is fabrication. That little square house with a four-square roof on it—well, it did not exist; but he spoke of it as though he had seen it. The truth is that he went over that route with Orderly Duffee, and the whole thing was talked up between them. Orderly Duffee says that he endeavored to lead him off the road! A very credible story! The orderly, Duffee, is a very impartial witness, a very candid and fair man, desirous to do justice to General Porter and to everybody; yet, when Mr. Collins goes to see him in Columbus, he considers it necessary to tell him a lie, and confesses before you that it was a lie, because he did not want him to find out how he was going to testify. Well, I am glad he has repented; I am glad he is converted at last.

It is true that there has been an endeavor here, by the introduction of the witness Wheeler, who resides upon the battle field, to show that there were roads all through that country, and that, therefore, the conclusion is to be drawn that Orderly Duffee and Captain Pope came down some road parallel with the Sudley Springs road, or that Ricketts' troops marched up some road parallel with the Sudley Springs road, and, therefore, the army and the messengers failed to meet.

Is the prosecution, or I should say is the government, reduced to such a theory as this? A glance at the map will show that that country is practically open for a distance of at least half a mile on either side of the road, and these witnesses, if they had eyes at all, if they were in possession of the same sense which allowed them to calculate distances, and to observe directions and to observe dilapidated houses, must, if they came that road at the time which they say they did, have seen eight thousand men on the march to the stone house. And yet the court-martial took the evidence of these witnesses, confused as it was, before them, and concluded that that order was delivered by five, or near half past, and that notwithstanding the evidence of General
1345 Sykes to the effect that he, being present with General Porter, saw the order brought: "It was near sunset, as near as I can remember, certainly within a little before sunset or after sunset" (p. 177); of Colonel Locke, that he witnessed the delivery, and that it was between sundown and dusk (p. 136); of Captain Monteith, who knew Captain Pope, that the order was delivered by sundown (127); of Lieutenant Ingham, who knew Captain Pope, and that the order was delivered after sunset (p. 199), that Captain Pope remained twenty or twenty-five minutes talking with General Porter, and that after Captain Pope had ridden away about a quarter of a mile he rode after him, and it was so dark that he had to ride close up to him to see who he was when he overtook him; of Lieutenant Weld, that he had gone over to see General Pope, that he had started from General Porter about four o'clock by his watch, had seen General Pope near the stone house, had returned, and that it was after sundown, about a quarter to seven, as he thought, when he got back, and that General Pope's messenger, Captain Pope, arrived there after his return (130).

Why did the court refuse this evidence and take that of Captain Pope and the orderly, Duffee? Why, I submit, only because they yielded to

the popular impression, as all human minds must and do yield at times of popular excitement. The corrobatory evidence, if so it may be called, that was introduced on the old trial to support Captain Pope and Orderly Duffee was the opinion of several "*intelligent and reliable witnesses*" to the effect that the order could have been carried within that time!

And as to the fact that Colonel Ruggles is alleged to have directed these men—that General Pope is alleged to have stood by and perhaps to have directed these men—as to the route which they should take to get to General Porter!—Colonel Ruggles and General Pope, not knowing of the presence of the enemy in General Porter's front, not knowing that there was any danger of capture, and pointing in the direction in which those guns were heard away to Porter's front—I submit that that direction was one which would have taken them to Dawkins' Branch, and that they would therefore have passed by Compton's in going in a direct line. They took that direction. They went up Chinn's Branch; they saw General McDowell, and again they were directed where to find General Porter. And it never has appeared, and it does not appear, that General McDowell was better informed as to the position of General Porter than General Pope or Colonel Ruggles, for he did not know that General Porter was at the junction of the Manassas-Gainesville and Manassas-Sudley roads. It stands to reason, then, that the theory which I adopted on the close examination of the evidence of these two messengers given on the former trial is correct, to wit, that they must have gone out at least to the junction of Compton's lane with the old Warrenton and Alexandria road, and then, finding their mistake as to direction, turned and came out by Smith's house on the Manassas Gap road, thus bringing them onto that road late in the day. And I say that it is wonderful that the story of these officers of the Army, summoned from the distant plains of Montana, should so tally with the theory which I adopted, which was that they must have got lost. How could Captain Jones remember that Captain Pope said he lost his way, and asked to be directed by some women and children, unless he did hear it said? What interest in this question has Captain Jones, who was greatly surprised that he was ever summoned, and whose name was unknown to us at the time he was summoned? Why should he not be believed, a disinterested witness, narrating a thing that corresponds with facts, rather
1346 than a man who is interested to preserve his integrity before this nation, and a near relative of the man, and a former staff-officer of the man who has been General Porter's bitterest personal enemy? Why should not the word of General Sykes be received, whose honor can never be impeached, rather than that of Captain Pope, who has been ensnared by his own admissions? Or than that of the orderly, Duffee, who has confessed before you that he lied to Mr. Collins, and that he was not under oath, and did not feel bound to tell Mr. Collins the truth, especially when the Recorder, who brings him here, laments that it is not in the power of this Board to administer a valid and binding oath? Orderly Duffee, therefore, is not responsible to the laws of this country for false swearing before you, and his conscience can be no more affected by such false swearing than it is by deliberate lying. The fear of God should be as much before his eyes in ordinary conversation as it is when he gives evidence before a Board which has no power to punish him for perjury. Why should not the evidence of Captain Randol—that witness whose intelligent description of the events of the 29th was so admired by all who heard him—be taken rather than that of these two men? He says "that the order was not delivered until it was growing dark; it must

have been between six and seven o'clock; it grew dark immediately afterward, and was dark when I got back to my position." He further says that he recognized the officer as one who was introduced to him afterwards as Captain Pope. But what more is needed to prove that these witnesses were, to say the least, mistaken?

Nothing, and yet something equally convincing with the dispatch of 6 p. m. has been introduced. Dyer thought, when he got back to the vicinity of the Manassas pike, that he could see tents across it. Yet Captain Pope, his superior, says it was so dark that he went to General McDowell's tent to inquire the way to his uncle's; yet they were only a short distance from each other; and he says he got back about eight o'clock. Yet this man, Dyer, saw the tents and no fires. What folly! His memory is too good.

Colonel Ruggles has testified that the 4.30 order was dated when he began to write it, and that must have taken some time. Then the direction as to the whereabouts of General Porter must have taken some time, and the conversation with General McDowell must have taken some time.

The fact that as soon as Captain Pope got up to General Porter's headquarters, "General Porter at once set about the execution of the order, or within five or ten minutes after" (according to Captain Monteith, B. R., *p.* 312) "in prompt response to the order." Colonel Locke was sent to General Morell.

Leipold, orderly to Colonel Locke (B. R., 56–7), says:

I remember towards evening, or just before dark, of riding forward some distance down toward a little stream. Just before coming to that point General Locke asked me to remain there and wait for General Porter, and he went off to the left, I think, somewhere.

Leipold is a new witness.

Colonel Locke says (B. R., 298):

It could not have been more than five minutes after the delivery of the order before he was sent to General Morell with orders to attack with his whole division, and he reached him in twenty minutes.

He also says:

Answer. General Porter gave me orders to ride to General Morell and tell him to move into action at once, and say that he would be up immediately after. After having given General Morell those orders, I turned to go back; after getting a
1347 little distance on the road I thought I would wait and intercept the general. I rode off of the road into a little open that was there, and being very tired, and my leg hurting me from an injury I had received, I threw myself on the ground, and told my orderly, Leipold, to go to the edge of the road and watch for the general as he passed, as I wanted to join him. I was there a few moments when I heard this firing that I referred to. After waiting a few minutes longer, it was so dark I said to my orderly I would go back, as I supposed the general had passed without his seeing him. I mounted my horse and rode back to where I had started from.

This was dark, and he had only had time to ride up and deliver his order.

Q. While you were lying there in that open close by the road were troops moving?—A. Yes, sir.

Q. Whose troops?—A. General Morell's.

Q. Which way?—A. Up to the front.

Q. Can you tell about the degree of light or darkness at that time?—A. I could not have been further from the road than from here to the side of the room, and it was so dark I could only distinguish moving forms to know that a column of troops was passing.

Q. Have you looked on that map of General Warren's?—A. Yes, sir.

Q. Locate where General Morell was when you gave the order to him, where General Porter was when you took the order, and where the spot was that you lay down by the side of the road.—A. Our position was on a ridge right here just back of

Dawkins' Branch. When we reached General Morell he was just at the front near where the road crosses over and crosses the branch and goes on.

Q. Was he up on the ridge?—A. Right on the ridge.

Q. You spoke to General Morell in person?—A. Yes, sir. When I left him I should say I had not gone 200 or 300 yards before I stopped, knowing that General Porter was coming right after me. I thought I would not ride any further before I would join him.

Q. Where was General Porter when you started from him?—A. He was down very near to Bethlehem Church.

Afterward Colonel Locke says (B. R., 300) that the occasion Leipold testified to, as occurring about dusk, was when this order was carried to General Morell.

At this time General Porter was near Bethlehem Church and General Morell near Dawkins' Branch.

Let me interrupt the course of the argument here to say that when General Porter received this dispatch he was, according to Captain Pope, lying down; and that the Judge-Advocate-General commented upon that in the bitterest manner, stating that he was lying on his back; that when the order was given for him to attack he should have sprung at once to his feet. Well, that is the way some men would have done; others more cool would have given their orders as General Porter did, and continued the conversation with the aide-de-camp who brought the order to know what was the position of the force on his right. The Recorder, in a manner which surprised me, judging from his politeness at the opening of this case, has commented upon that in the most unkind manner, knowing as he did that General Porter was sick at the time, and that he necessarily laid down to obtain relief after having ridden about all day, and that he was there for his health, in order to the forcible administration of his office, because his health was necessary in the exercise of his duties as a general.

Now, it seems that General Morell had, at the hand of Major Earle (B. R., 411), received the following order:

1348 [No. 37.]

AUGUST 29TH.

General MORELL: I wish you to push up two regiments, supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the section of artillery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling as our troops advance.

F. J. PORTER,
Major-General Commanding.

This order had passed up the road, and its bearer evidently had told its import to General Warren at 5.45 o'clock, as it appears to contain language almost identical with that contained in this dispatch, written at that hour by General Warren:

5h. 45m. P. M., AUG. 29, 1862.

General SYKES: I received an order from Mr. Cutting to advance to the support of Morell; I faced about and did so. I soon met Griffin's brigade withdrawing, by order of General Morell, who was not pushed out, but retiring. I faced about and marched back 200 yards or so; I met then an orderly from General Porter to General Morell, saying he must push on and press the enemy; that all was going well for us and he was retiring. Griffin then faced about, and I am following him to support General Morell, as ordered. None of the batteries are closed up to me.

Respectfully,

G. K. WARREN.

This was sent by Major Earle, not Colonel Locke. This dispatch was the dispatch supposed on the court-martial to be the order ordering an attack pursuant to the 4.30 p. m. order. I propose to show that it was not.

This order was supposed by the court and Judge-Advocate-General to be the order issued by General Porter upon the receipt of the 4.30 order, but they were entirely distinct, and the written order preceded Colonel Locke some time. Concerning these two orders General Morell gave this testimony on the old trial (page 146, C. R.):

A little while before sunset—just about sunset—I received an order, in pencil, from General Porter to make dispositions to attack the enemy. That order spoke of the enemy as retiring.

I knew that could not be the case from the reports I had received, and also from the sounds of the firing. I immediately sent back word to General Porter that the order must have been given under a misapprehension; but at the same time I began to make dispositions to make the attack in case it was to be made. Colonel Locke soon after came to me with an order from General Porter to make the attack. I told him (and I think in my message to General Porter I spoke of the lateness of the day) that we could not do it before dark. Before I got the men in position to make the attack the order was countermanded, and I was directed to remain where I was during the night. General Porter himself came up in a very few minutes afterwards and remained with me for some time. It was then just in the gray of the evening, between dusk and dark.

This shows that there were two orders sent; it shows that Morell sent back word to General Porter and that apparently there was time enough, according to his then supposition, for his messenger to go to Bethlehem Church and get back again—that is to say, to communicate with General Porter, and have General Locke sent back in answer to him, between the time of his reception of that order and Colonel Locke's coming; there were four miles to traverse; and this evident idea of General Morell shows, I think, the time intervening between the arrival of the first order and the arrival of Colonel Locke. And we have the testimony of Colonel Locke that he went up immediately on the arrival of Captain Pope.

Was this "made up" subsequent to General Porter's trial? Is this a plan adapted to after discovered facts? This is all on the court-martial record.

Then, on page 150, C. R.:

1349 Q. You spoke of having received an order to make a disposition of your forces for an attack on the evening of the 29th of August. Have you that order here?—A. I have.

Q. Will you produce and read it?—A. [Producing a paper.] This is the order from General Porter:

"AUGUST 29th.

"GENERAL MORELL: I wish you to push up two regiments supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the section of artillery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling as our troops advance.

"F. J. PORTER,
"*Major-General Commanding.*"

That is the order I received about sunset, or little before sunset, on the 29th. There is no hour or date to the order.

* * * * * * *

It was countermanded just about dusk.

I sent a message to General Porter. A message came back by Colonel Locke to make the attack, but very soon after that the order was countermanded, and very soon after that General Porter came up himself.

(C. R., p. 158.)

The order to attack was received just before sunset, and the order to pass the night was received about dark.

It will thus be seen that it must have been about six o'clock when the order by Major Earle was delivered to General Morell, or "just as the sun was going down over the trees," in the words of the Major.

Then Colonel Marshall came up, and afterwards Colonel Locke, and at nearly dark General Porter came. (Earle, B. R., 412.)

General Morell testifies before you (436) that he supposed the written order to attack brought by Major Earle and the verbal order to attack brought by Colonel Locke were both issued under the 4.30 order; but since talking with Major Earle, and hearing his testimony and that of Colonel Locke, he does not think so; but (p. 429, B. R.) he says:

Q. Now, in the light of Major Earle's testimony, what have you to say about the two orders, the written order and the verbal order?—A. My impression is now—my opinion—that the order to make this attack with four regiments was brought to me by Major Earle before General Porter received the 4.30 order, and that Colonel Locke's message to me was in consequence of his having received that 4.30 order. I knew nothing of this 4.30 order until just before the trial of General Porter in Washington.

Q. Did you not know when you testified before that the order Colonel Locke brought you was after, and in consequence of, the receipt by General Porter of the 4.30 p. m. order?—A. No. My attention was not called to that until quite recently.

Q. You then supposed that the order brought by Colonel Locke was made in response to your message that it was too late?—A. Yes; sort of urging me on to make the attack.

And again, B. R., p. 436:

Q. You have testified as to receiving No. 37. What interval of time elapsed between receiving that written message and the verbal one of General Locke?—A. It was but a short time when Colonel Locke came up. I recollect it was after sunset—the sun had disappeared.

Q. Had you time to do anything under No. 37 before Colonel Locke arrived?—A. My command was already coming up to the front.

Q. Where had they been?—A. In these pine bushes; they were coming up to deploy.

Q. Were they coming up through the bushes?—A. No, sir; they had got out of the bushes. One brigade was behind this battery; that did not move, of course; and the other two that were in the rear came up in this direction.

Q. And took position on the left of the one in position?—A. The one on the left of the road. I had two rifled guns and one smooth-bore; I put the two rifled guns in front.

1350 Q. Between the receipt of No. 37 and Colonel Locke's verbal message, what was the interval of time, should you say?—A. I cannot give it in time. I recollect distinctly when he came up. It was after sunset; it could not have been a long time, because when I received the order the sun was just touching the trees.

Q. You were then getting your position under order 37?—A. When Colonel Locke came up, yes. Of course I would not move the four regiments until the rest were ready to support them.

Q. It was about sunset when you received No. 37?—A. Yes; just about sunset—a few minutes before.

So that Colonel Locke did not deliver the order to General Morell till after sunset. And yet Colonel Locke was the first person to carry any order after the receipt of the 4.30 order, so that the one borne by Major Earle must have been sent before the receipt of the 4.30 order. It passed General Warren at 5.45, or rather some little time before that, perhaps ten or fifteen minutes before that—perhaps at 5.30, or 5.35 o'clock, because after the passing of the messenger Griffin's troops faced about, and so did General Warren's, and were marching towards the front before this note of General Warren's was written (see dispatch). And as the 4.30 order is not claimed to have arrived before 5.30 at Bethlehem Church, and General Warren was a mile or so nearer the front, the written order borne by Major Earle could not have referred to that 4.30 order, even if it had been delivered at 5.30.

Indeed, a sufficient interval elapsed between the receipt of the order by Major Earle and of that by Colonel Locke to cause General Morell to think his message, sent during that interval, had had time to go back to General Porter and be the cause of Colonel Locke's coming to him in answer.

But General Porter gave a written reply to Captain Pope to return to General Pope.

Captain Pope (C. R., 58) says:

After receiving a written reply to the order I had delivered to General Porter, I started on my way back, &c.

He says, also (C. R., 60):

It was after dark when I got to General McDowell. I staid with General McDowell fifteen or twenty minutes. He had then to *show* me where Generel Pope's headquarters were. It was then, I should think, about 8 o'clock when I got to General Pope.

General McDowell must have gone with Captain Pope to General Pope's headquarters (because he had to get General McDowell to show him the way to his uncle's headquarters), and they must have reached there about 8.30 p. m. There the written answer of General Porter, which General Pope conveniently forgot, and never produced at the court-martial, was read. There the note written by General Porter to McDowell and King, as follows:

[No. 36.]

AUGUST 29, 1862.

Generals McDOWELL and KING:

I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. I will communicate with you. Had you not better send your train back?

F. J. PORTER,
Major-General.

but which was received at 5.45, according to General Heintzelman's diary, was reproduced by General Pope and commented on, and there and then General McDowell must have produced or told about the note to him, received by him, and produced by him before this Board (B. R., 810):

1351

General McDOWELL:

The firing on my right has so far retired that, as I cannot advance, and have failed to get over to you, except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate please do so. I have sent many messengers to you and Gen'l Sigel, and get nothing.

F. J. PORTER,
Major-General.

An artillery duel is going on now—been skirmishing for a long time.

F. J. P.

This dispatch, No. 36, which has been made so much of on the former trial, General Pope says was received between seven and eight o'clock. It was received, I think it is very plain (I will apply the touchstone of General Heintzelman's diary to it), at about 5.45. On page 611 of the Board's record, General Heintzelman's diary is as follows:

At forty-five minutes past three McDowell's troops reported arrived. Firing closed at fifteen minutes past four. At half past four General Reynolds' troops arrived. Five p. m. our troops engaged on the enemy's right. Twenty minutes past five p. m. musketry firing commenced on our center. General Kearney has held his position. Forty-five minutes past five General McDowell on the field at headquarters. Heavy firing on our center. Kearney reports he is driving the enemy back. General Porter reports the rebels driving him back, and he retiring on Manassas.

Twenty minutes past six is the next date, showing that it must have been received between these two hours. General Pope says he received no information until that time. Then how did General Heintzelman get

it; who was with him? That memorandum was made at that time by the watch; and General Pope has been proved to have been mistaken before as to time.

And, fired by these dispatches, General Pope commenced to dictate an order for General Porter's arrest.

General Pope (C. R., 23) testifies of this, saying that he received the joint note to McDowell and King about the time the 8.50 order was written, and so does General Roberts, after making a mistake which he corrects; but General Heintzelman's diary, written on the spot, is the best evidence, and that says this information was received at 5.45 p. m. General Pope says that he was then persuaded not to arrest General Porter by General McDowell, General Heintzelman, General Roberts, and General Hooker (C. R., 24). He then changed the order into the 8.50 p. m. order:

[No. 40.]

HEADQUARTERS ARMY OF VIRGINIA,
In the Field near Bull Run, August 29, 1862—8.50 p. m.

GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

JOHN POPE,
Major-General Commanding.

Major-General F. J. PORTER.
(Received 3.30 a. m., August 30.)

When General Pope was in this rage at General Porter, determined even to arrest him, was it not natural that, if he had writings over General Porter's signature that would tend to criminate him, he would preserve those writings, and that if General Porter's reply to the 4.30 order had that tendency he would have preserved it, arriving, as it did, at the moment his vindictiveness was aroused?

1352 Or, if you choose to put it, "arriving as it did at the moment his righteous sense of justice was aroused," would not it equally have been preserved for purposes of conviction?

What has become of it?

I claim that that reply of General Porter, if ever produced, will show the hour the 4.30 order was received, and will support General Porter's claim that it was not received till half past six in the evening.

Whenever any document has turned up in this investigation it has resulted in being evidence in General Porter's favor; and General Porter has all along courted the production of dispatches, though it is impossible for him to remember the contents of all that he wrote. If they have not been produced, it has not been his fault. We have them not. It rests upon others.

Having thus shown that General Porter was entirely innocent of the charges upon which he was convicted, I shall turn to the claim advanced by us, that his remaining stationary accomplished, without loss of blood, what could not have been accomplished had he attacked and been defeated, namely,

HE KEPT LONGSTREET'S FORCE FROM ATTACKING GENERAL POPE'S MAIN ARMY IN FLANK ON THE 29TH OF AUGUST, 1862, AND THUS DELAYED ITS DEFEAT BY ONE DAY.

The Recorder has strenuously insisted that the force which was reported as coming from the direction of Bristoe which caused the trans-

fer of General Wilcox from his central position upon the turnpike over to the Manassas Gap Railroad was not General Porter's but General Banks'.

In the first place, the minds of General Stuart in his report and of the witnesses White and Landstreet were not clear when they thought they were speaking of General Porter's forces (which view, by the bye, the Recorder insists upon), saying they were approaching from the direction of Bristoe.

The report of General Stuart clearly referred to General Porter or to General Reynolds, for he must have found them, judging from his report, just after Major Frobel fired from Stuart's Hill, and he says:

> Immediately upon the receipt of that intelligence, Jenkins', Kemper's, and D. R. Jones' brigades and several pieces of artillery were ordered to me by General Longstreet, *and being placed in position fronting Bristoe waiting the enemy's advance.*

Now we have it in evidence that these three brigades were fronting Bristoe; the line would then run east and west instead of running, as it did, in a general direction north and south.

I cannot support General Stuart's statements as to these "brigades" (he did not even know they were "divisions") being "*ordered*" to him by General Longstreet, but I do say that, knowing that the line of the Southern army faced the east and not the south, General Stuart must have supposed Bristoe to have been toward the east, where General Porter was, and not toward the south, where that hamlet actually was.

But, catching at the word *Bristoe*, the Recorder seizes upon the unfortunate Captain Dobson, who seems to be the only survivor of all his gallant division. I say this because he alone is produced to prove a very important proposition, while three men from Ohio were brought on to prove that a few ambulances were sent down the Catlett's Station road on the morning of the 28th, and six men from Pennsylvania to prove the presence of some fifty cavalry with General Porter August 29th—both of which were very unimportant facts.

1353 Why did not the Recorder bring more than one man to prove that a part of General Banks' force marched on a reconnoissance to near Langley's Mills on the afternoon of August 29, 1862? Are all the men that so marched dead? Or is Captain Dobson the only man of sufficiently lively imagination to remember this occurrence?

Why were not his commanding officers summoned? Why was not some report or itinerary introduced to support him?

The reason, of course, is because this witness is wrong in dates and localities.

He says that he was in Third Maryland Volunteers, Prince's brigade, Augur's division, Banks' corps, at Bristoe Station, August 29, 1862, and that his regiment, with other troops—he doesn't know how many—moved in the direction of Gainesville, as he "understood" "it was given out," "said to be in the direction of Gainesville."

> I was simply a line officer. I had no opportunity as a general officer would have of knowing these things.

He cannot even tell the road he took as to the points of the compass from his knowledge at that time. They took one of two roads that led from Bristoe Station to the enemy's front, and marched three or three and a half miles, and halted about half past three or four o'clock.

A gentleman named Judge Baker, who lived near by, invited him and other officers to dinner. He got to the house to dinner too late, but still dinner was had for him. When he got through eating the Union pickets were driven in, and the captain was almost caught by the enemy's cav-

alry videttes, who were the only troops he saw. This was between four and five o'clock. His whole brigade, and some other troops which were near by, then retired to Bristoe.

This information he gave years ago to Col. T. C. H. Smith, in Marietta, Ohio, and he has recently gone to the vicinity with that gentleman, who, together with a Northern family, seem to have altogether guided his footsteps; for instead of going to Bristoe, and trying thence to trace his route and find his place of dining, he goes with Colonel Smith over a route he never before traveled to the neighborhood of Langley's Mills.

Near this point he found a house that partially represented the one wherein had dwelt the gentleman who gave the dinner:

Not perfectly so. I have no memory of the house that is there, that I took to be the house that I visited.

Q. What was there about this house that you recognized as being the place where you had halted and dined?—A. Its distance from the road; its loneliness, not being surrounded by any outbuildings; and its size; there were some things about the building that would convince me that it was not the building; it did not seem to me to be the same shaped building that I had dined in; for instance, my memory was that there was a porch in front of the building where I dined, and I entered that porch, and there I got into a vestibule or hall, and on either side there were rooms; in this house there appeared to be windows all along the front and no entrance. I found that it was used for a barn—corn and grain, &c., stored in it.

Q. Is the building a modern one, a recent structure, or an old building?—A. It is an old building.

Q. Was there anything in the interior of the building which made you partially recognize it; if so, what?—A. When I got into the building I found that it was in an incomplete state now; I found that it had been finished; I found that it had been lathed and plastered, but there was no lath or plaster on it at present; it was not in a finished condition; it struck me that they must have torn it down and made a new structure.

How could this witness swear that he was at that point? He says he could not recognize the house. Where then and how then does this cor-

Hereford? Judge Baker never lived there. Mr. Leachman's
1354 brother-in-law built the house. Nobody lived there in 1862. I wish to be very fair and candid. I do not know whether the Recorder will admit that the house described as the Loretta was the house that this man meant. Perhaps the connection is not established. There were some rumors that he was going to call the witness Payne, but he has not done so. Perhaps that evidence should fall and perhaps not. I leave that entirely to the Board; but Baker never lived there nor anywhere in that vicinity. There were not any troops about there that this man Hereford saw. There might have been, for aught he knew, but he didn't see them.

respond with the hovel that Payne lived in, as we have heard from Mr.

Dobson did not look for nor find Judge Baker, nor did he find features in the landscape that he recognized except "very little," as he says. Distance from the road and loneliness are common to houses in Virginia, and size without reference to form is no guide.

There is no way in which we could fix upon the houses at all, save because he was told that Judge Baker had lived there. This hearsay evidence was introduced in the absence of the Board, notwithstanding my strenuous protest, which, with the replies, should have appeared more at length on the record. When I say this I do not mean to implicate the stenographer. There was a great deal of conversation which, I presume, was not deemed important.

But the witness is entirely wrong. He was not at or near Langley's Mills on the 29th of August, 1862.

If there at all, he was not there until the 30th. His memory of dates is poor. He thought he arrived at Bristoe Station very late in the night

of the 27th, "or very early on the morning of the 28th"; that is, "after midnight, one or two o'clock," when Banks' corps was still at Warrenton Junction! And when General Pope, at Bristoe, at 10.40 a. m. of the 28th, that same day issued the following order to General Banks, who was still at Catlett Station:

HEADQUARTERS ARMY OF VIRGINIA,
BRISTOE STATION, *Aug.* 28, 1862—10.40 *a. m.*

Major-General BANKS, *Warrenton Junction:*

GENERAL: Major-General Pope directs me to say that as soon as the railroad trains and all public property shall have been safely run back from Warrenton Junction you will move your command back to Kettle Run Bridge, where you will find the railroad obstructed and the railroad trains stopped.

You will there take the same measures to save the public property from attack by the enemy as directed in copy of General Orders from these headquarters, sent to you yesterday through Major-General Porter.

I am, general, very respectfully, your ob't serv't,

GEO. D. RUGGLES,
Colonel and Chief of Staff.

It will be recollected that General Banks had been ordered, through General Porter, to remain at Warrenton Junction the night of the 27th, and that General Porter, arriving during the morning of the 28th, remained at Bristoe till the morning of the 29th.

Yet Captain Dobson says he saw no troops at Bristoe when he got there, except the Maryland troops. We know that General Porter was there all day. If there had been any others he would have known it.

He says:

There were a good many stores at Bristoe, a large train, and I think we were kept there to give us rest, and at the same time protect the train. I think we were only there one day.

Now, there were no houses at Bristoe at all, and when Professor Andrews testified that he was at Bristoe, according to his recollection, on the 29th, General Gordon testifying from his diary that they were at
Kettle Run, which is only a mile and a half distant, and being
1355 in the vicinity of Bristoe, it quite sufficiently answers Professor
Andrews' idea that he was at Bristoe Station; and there is no contradiction, except a seeming one, between the two witnesses.

If he arrived there early the 28th, at 1 or 2 o'clock a. m., he found no wagon train there, for it had not yet arrived, and no railroad train, for they were all stopped at Kettle Run.

General Banks had no reason for having any of his troops at Bristoe till the 29th, because it was his duty to stay at Kettle Run and guard the trains that were stopped there by the destruction of the bridge.

What wagon trains were at Bristoe could be cared for by General Porter.

Certainly he was not at Bristoe on the 28th, and since Captain Dobson is positive that his brigade had been at Bristoe a whole day and probably a part of another before this little march was made from Bristoe Station to Langley's Mills, it occurred on the 30th instead of the 29th. Captain Dobson was sent to Alexandria sick the day after this alleged expedition, went in a covered ambulance, and did not see which route he went.

The man was too sick to remember dates.

Yet, upon this *one* witness, feeble as he is, does the government lean when it seeks to detract from General Porter's merit in so delaying Longstreet that he had not time to attack that day, while some *forty* witnesses were introduced to protect the reputation of General Pope when

he asserted that a severe action was fought from daylight until dark; and then said in another place that there were severe skirmishes for four hours, when the whole point, at any rate, was immaterial to this investigation. Comment is unnecessary.

That General Porter did cause this delay we know, because General Longstreet says:

Q. Were you advised as to the plan or purpose of General Lee as to making attack, or inviting an attack from the enemy that day?—A. Yes, sir; I believe I was advised of his views and wishes.

Q. Please state what his plan was.—A. As soon as my line was deployed the general wanted me to bring on the engagement, and urged me to do so. I asked him for a little time to make a reconnaissance of the ground so I might understand better how to handle my troops, which he gave me; after making that reconnaissance I thought there was a force along up here somewhere [above the Warrenton and Gainesville pike], artillery and infantry too, a considerable force; I came down, I think, along by Young's Branch, and got as far forward as I dare venture; I saw enough of that force to satisfy me that it would be a little hazardous to make a front attack, that is, make a parallel battery throwing our troops forward so as to breast the storm; so I reported to General Lee that I had some doubt of our being able to carry the position; while we were talking about that—he still thinking that he could find some way of getting around—while we were discussing that, General Stuart sent a report of the advance of a force against my right; as soon as that came General Lee ordered me to cross to that point and to re-enforce it, which I did with three brigades under Wilcox.

* * * * * * *

A. The ground was fair; it was taken with a view more to attack than for defense; but when I went over on my right and heard of the approach of this force, on looking at the ground thoroughly, I thought it was very good for defense, particularly on that part of the field; the other part was arranged solely with a view to attack; my troops were thrown over the road, more as a protection than anything else, until we could discover what we were to do.

* * * * * * *

A. General Lee was very anxious for me to bring on a battle.

* * * * * * *

Q. Then, do I understand you that the presence of General Porter, where he was that day, held your force where it was and prevented an attack being made by it?—A. I don't know that it held us exactly, *but it delayed us until the time passed for it.* If we had had more time, I don't know but we might have made the attack.

1356 Q. But for that day it held you?—A. *I think it checked our movement, retarded it so as to keep us there until it was too late.* If we had had three or four more hours' daylight, I think it very probable we would have gone in anyhow.

Col. Charles Marshall, confidential aid to General Lee, testifies (B. R., 160–1):

Q. What was the effect of these troops that you speak of being on your right which were reconnoitered by General Lee? What effect had that on Longstreet's troops? Do you know where those troops were located—the Federal troops?—A. In front of Jones. They were reported as advancing on the road from Manassas Junction. The first report was that they were coming from the direction of Bristoe Station. It was explained afterwards that the road they were on had a fork which went on to Bristoe. When they were seen they were beyond that fork, and they could not tell whether they came from Bristoe or Manassas.

Q. Can you tell about where those troops were supposed to be located on that map?—A. Where I locate Jones would be the crossing of the road about *there*, along the road from Manassas Station.

Q. What was the effect of those troops being there? What effect had they upon General Longstreet's troops?—A. I only know there were six brigades, three of Jones and three of Wilcox, left there to watch them.

Q. How long did they remain in that position?—A. Jones, as I told you, was not withdrawn that night. He remained there until the afternoon of the next day. Wilcox was withdrawn to support Hood late in the afternoon of the 29th.

Q. How many troops had General Longstreet under him that day that arrived upon the battle-field during the day?—A. I estimated that he had twelve brigades. I think at that time the average of our brigades would be somewhere in the neighborhood of 2,000 or 2,100. One of those brigades was small, it was Hood's, but the others were about the average; perhaps some may have overrun a little, but I should think that 2,000 would be a fair estimate for the average strength of the brigades that Longstreet had under him. I am speaking of infantry.

* * * * * * *

Q. Do you know anything of the purpose of General Lee to have made an attack that day?—A. He went there to attack. He had tried to make the same attack on General Pope between the Rapidan and the Rappahannock, had made all his disposition for it on the 18th of August, but it failed on account of part of the officers intended to co-operate not coming up. Then he made two attempts to bring on an engagement on the Lower Rappahannock. He crossed the river there close at Beverley's Ford, and again at Warrenton Springs. Jackson had got there on the 22d, and remained until the 23d, but the river rose very suddenly and he had to bring his troops back. Then it was determined to make this march around by Thoroughfare Gap and strike the railroad behind General Pope, in order to bring him back to the Rappahannock and fight him there. We went there to fight him. General Lee was desirous to make the attack on the 29th; Longstreet was not. These troops were not available for that purpose that evening.

Q. Which troops?—A. Troops of Jones and Wilcox.

Q. Why not?—A. They were confronted by another force which threatened our right.

Q. Had that anything to do with your not having made that attack on that day?—A. I think it had.

Q. What effect had it?—A. We used those troops the next day.

Q. In other words, they prevented an attack from being made that day?—A. I think it did. The next day these troops were there to be used, and they were used in the fight next day.

* * * * * * *

Q. Had the presence of this force any effect in keeping Longstreet's force on the right practically in the position in which it was deployed, or not, during that day?—A. I think it had. I think, undoubtedly, the presence of those troops prevented the free use of Longstreet's whole force on our right on the turnpike.

It does not need the testimony of this witness, it seems to me, to indorse a common-sense principle. These are the only witnesses who know anything concerning the plans of General Lee, and independ-
1357 ent of their individual opinions, it must be evident to all that the Confederate commander-in-chief being anxious to attack, yet allowing his men to remain inactive, must have been delayed by General Porter's force, either because he expected an attack from him or because he feared to remove Jones and Kemper while General Porter was left on his right flank, ready to fall on his rear if he should move forward.

At any rate, he re-enforced Jones with Wilcox's division.

It is true that when General Lee learned early next morning, as he probably did, that General Porter was withdrawn, he did not attack, and there was no engagement till afternoon. But that is explained by the fact that he was awaiting an attack on that morning, and that when General Porter's attack was made in the afternoon of August 30, then Longstreet's force, unhindered by the presence of an enemy to his right and rear, swept down between Groveton and the Chinn house upon General Warren's devoted band and destroyed it, leaving only the brave commander and a few soldiers alive and unharmed, and they then charged on past the Chinn house up the Henry house hill, where the solid ranks of the Fifth Corps Regulars under General Sykes, brought up as re-inforcements, aided in checking their advance by a most stubborn resistance.

Thus did the Fifth Corps under General Porter bear their due share in aiding Generals Sigel, Reno, Reynolds, and Tower in checking the onslaught upon Pope's unprotected left wing.

The pages of the record of your proceedings are eloquent with the testimony of Warren, Sykes, Butterfield, Ruggles, Randol, the two Marshalls, Union and Confederate, Baker, Hyland, Slater, and many other as to the valiant bearing of the Fifth Corps when, on the afternoon of that dreadful Saturday, closely attended by their zealous general, they marched out of the woods north of Groveton and charged against the southern lines securely posted behind the railroad cut and embankment—charged up to within ten feet of the foe until they met a wall of musketry fire in front, and

were mowed down by it and by the remorseless rain of shot and shell from the many enfilading batteries on Douglass Heights.

Their valor is attested by the number of dead and wounded left thickly strewn on the bloody field. Out of the six thousand soldiers of the Fifth Corps one-third fell a sacrifice to duty.

And yet those two thousand men were wronged! wronged by their commanding general-in-chief, John Pope, even as late as 1865, when in his report to the Committee on the Conduct of the War (*page* 157, *2d vol. Supp't Conduct of War*) he said:

THE ATTACK OF PORTER WAS NEITHER VIGOROUS NOR PERSISTENT, AND HIS TROOPS SOON RETIRED IN CONSIDERABLE CONFUSION.

Thus defective in vision was the "eye of his indignant chief," which the Recorder seems to think the sole inducement to General Porter's exertions on the 30th of August.

Defective also was the eye of General Pope's inspector-general, the petitioner's nominal accuser, General Roberts, who actually charged that General Porter—

Did finally so *feebly fall* upon the enemy's lines as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their lines, or to inspire his troops to meet the *sacrifices* and to make the resistance demanded by the importance of his position, and the momentous consequences and disasters of a retreat at so critical a juncture of the day.

1358 This charge was withdrawn, but no evidence as to the gallant attack and resistance of those soldiers under General Porter's own eye was allowed to be introduced.

None of the actions of General Porter during the time he was under General Pope have, when calmly examined, proven him guilty.

What bearing upon his claim of innocence have his actions on his way up from Harrison's Landing? They have been recounted at length in his statement, and supported by the testimony before you and before the court-martial.

Very cold is the comfort the Recorder can extract from his criticism upon that part of General Porter's statement. Forced to admit the rapidity of General Porter's march from Harrison's Landing, he calls it a sad commentary upon his subsequent conduct, which subsequent conduct has, I submit, been proved meritorious.

He selects an order of General McClellan, which requests General Porter to embark "without one moment's delay. The necessity is very pressing; a matter of life and death," and infers that this indicates a lack of speed on General Porter's part, when we have proved that he had voluntarily and contrary to orders marched from Williamsburg and prepared vessels for embarking his troops, and thus, according to General McClellan, hastened his departure by one day, a time which is very important in a matter of life and death. No! this order indicates anxiety on the part of General McClellan, not tardiness on the part of General Porter.

At the time this order was issued nearly all of General Porter's troops had been embarked—all, indeed, except the artillery and one regiment.

As for the charge that General Porter received the order to join General Pope directly from General Halleck, in the name of the petitioner I deny it. It was a mistake on the part of General McClellan. All orders issued to him came from General Burnside, who commanded in that department.

When General McClellan said the order came from General Halleck direct, he probably meant that it did not come through him, but to

General Burnside, and then to General Porter. General McClellan was the commanding officer of both.

General Porter's newly-discovered orders and dispatches tell the story of his march from Fredericksburg. For instance, this order shows he intended to join Pope before he left Fredericksburg:

FALMOUTH, *August* 24.

General MORELL: If there is no large force at Kelly's Ford, push on to Rappahannock Station. Sykes will follow, and the whole corps will move on to join Pope near Sulphur Springs, at which point he attacked and drove the enemy over the river. Give aid to the telegraph operators; cut poles for them and push it along. The artillery is in motion; Graham and Smead join Sykes for the present.

F. J. PORTER.

And so does this:

HEADQUARTERS FIFTH ARMY CORPS,
Falmouth, August 23, 1862.

General MORELL: Dispatch received. Move on at once to Kelly's Ford, and occupy and hold it. Relieve Griffin when Sykes gets up to him. *If you are called upon to go to Rappahannock Station, move up to the support of the army there.*

Your artillery is on the road to you. Sykes will move up this morning and relieve Griffin.

F. J. PORTER,
Major-General Commanding.

1359 And the following order shows that General Porter was ordered to hold the fords of the Rappahannock:

AUGUST 24—2 p. m.

Generals MORELL AND SYKES: Push a scout to Rappahannock Station and find out if Pope has the pickets near there, and gain information of Pope or the enemy. Pope attacked the enemy yesterday, near Sulphur Springs, and the latter retreated. He was to renew the attack to-day, and it is probable Pope was pushing after him, knowing the river at Rappahannock was not fordable.

General Halleck's orders are for us to hold the Rappahannock.

Your artillery is *en route;* also Sykes'. You will therefore carry out your former instructions.

Re-enforcements will push up to you.

All goes right.

F. J. PORTER, *Major-General.*

No other order nor any evidence has been introduced showing that General Porter did not join General Pope voluntarily, as he has stated.

The Recorder will say that there was an order from General Halleck. But it shows that General Burnside received it as much as he did the other; and the usual course of events is what we cling to unless something else is shown. He is so earnest to fulfill his orders that he sends infantry without guns to hold these fords, and the artillery did not guard them until subsequently.

During this guarding of the fords of the Rappahannock, there was much marching and countermarching, as was necessary from the circumstances of the case.

The Recorder has asked a witness what marching did they do, and the reply has been that they marched to and fro there, sometimes one way, sometimes another, and that the marching was not difficult. Well, was this witness with the main body of the Army or was he with a detached force of the Army, moving two and fro, guarding the fords? There is no evidence introduced, and any comments founded upon this testimony are founded upon a very uncertain basis.

I think a very laughable criticism is that where the Recorder speaks as follows:

He asserts (on page 19) that he "had used extraordinary exertions to join General Pope," but this pretense of zeal fails in the light shed on this transaction by his own witness, General Burnside, when the latter swore on the trial (p. 185, G. C. M. Rec.)

that the accused "used no energy or dispatch in joining the command of General Pope, and in his military movements in that direction, beyond those which his duty as an officer required him to use."

In reply, I simply say that I suppose extraordinary exertions are a part of the duty of an officer, and that all the energy and dispatch that could be used in joining a command situated as was General Pope's the duty of every officer situated as was General Porter would oblige him to use, provided he found himself ordered to do so, or provided his discretion told him to cease needlessly guarding fords on the Rappahannock. But that General Porter did use his every energy to get up to General Pope his dispatches show, and so does the evidence of General Burnside himself, although he was not with General Porter on the march, and does not know as to that part of the journey.

General Porter's desire to do all that was required of him is further shown by the order produced by General Sturgis before you, as follows:

General STURGIS: Please put your command in motion to follow Sykes as soon as he starts. If you know of any other troops who are to join me, I wish you to send notice to them to follow you. We march as soon as we can see.

F. J. PORTER, *Major-General.*

1360 General Porter had been ordered by General Pope to leave his admirable position on Dawkins' Branch and march to the battle-field near Groveton, a false military move, as General Porter claimed, and as it is now, I think, self-evident. Not only was he obedient to that order, as he ought to have been, but he is even anxious to have any troops whatsoever who are to join him notified to follow him. "We march as soon as we can see." Urgent, diligent, prompt—that was his character. How I wish that dispatch had been produced before the court-martial. It would have been excellent evidence against the charge that General Porter allowed Griffin's and Sturgis' (Piatt's) troops to go to Centreville.

But General Porter's actions, when rightly understood or clearly set forth, can never condemn him, and the government and General Pope himself were obliged to have recourse to his words to condemn him. The *animus!* the *animus* of the accused was the cry of the Judge-Advocate-General; the *animus* of the accused, as displayed in his dispatches and in his interview with Colonel Smith, shows his actions to have been the result of deliberate and evil design!

The government has not ceased to turn the electric light of the petitioner's *animus* upon his case, and this electric light brought out startling effects in those sad, dark times of all-pervading suspicion—effects which are happily dissipated now when the broad sun of peace shines above us, distorting nothing, and dimming theatrical electric lights into those that shine not, though they blaze.

Nay, the enemies of the petitioner have actually caused to be brought here a professional spy (Bowers) who during the war was paid out of the secret-service fund. He says that August 31, 1862, at Centreville, about twelve or one o'clock, as near as he can now recollect:

A. I had started out some hour, or perhaps more, before that to look for a place to water our horses.

Q. Of your own volition?—A. By direction of our commander. In looking around I got inside of General Porter's lines and came up to an officer, I think, perhaps, of the rank of lieutenant-colonel, as near now as I can recollect; he asked me where I was going. I told him (I had no insignia of rank upon me) that we had been having a pretty hard time of it, and no chance to change clothing since the 18th of August, 1862. He appeared to disbelieve my statement; he took me with him—I think, perhaps, there was an enlisted man came up about that time—they took me to General Porter's headquarters; I was directed to stay there; there was a guard around headquarters—a slight guard—and while remaining there in that capacity, under arrest, as I considered myself, I saw General Porter.

Q. Did you hear any conversation on the part of General Porter?—A. I heard a gentleman that they called General Porter say to the officers who I took to be of his staff something like this: "General Pope is coming through this command shortly, and I don't wish any honors or courtesies shown to him, and I want my troops to be informed of my desire." Thereupon these officers, who I took to be General Porter's staff officers, left his headquarters tent, and shortly afterwards came back; some twenty minutes or half hour after that time General Pope came through, and no attention was paid to him.

Well, there might not have been any attention paid to him, without regard to this conversation, because General Pope was new to the Army, having come from the West shortly before, and General Porter's troops, having just joined Pope's army, probably did not personally know the commander of it.

This man's evidence was a willful falsehood. He was frequently an object of suspicion during the war, and was arrested "very often" because of his suspicious character. His suspicious character clings to him yet.

Trained scout as he was, with the keen pair of eyes that he has,
1361 it is singular he did not remember General Porter's personal appearance more distinctly, and should have been mistaken about a very striking feature.

Why did he, with his sharp eyes, declare that General Porter was in his "wall-tent"—his officer's tent—and that he (Bowers) was within an inch of it on that occasion, when there was no tent whatever there at that time, and only late in the afternoon, if at all, was even a tent-fly used?

The only members of General Porter's staff were Colonel Webb, since brigadier-general and brevet major-general, president of the College of the City of New York; Lieutenant-Colonel Locke, since brigadier-general; Lieutenant Weld, since brigadier-general; and Captain Montieth, now honorable merchants all of them, and Dr. Abbott and Captain McQuade, who are dead.

The three first named have specifically and indignantly, as became patriotic men, denied ever having heard of such an order being given by General Porter.

Captain Montieth, living in Cincinnati, was considered unnecessary to recall to contradict Bowers. He can be telegraphed an interrogatory on this point, if the Board desires.

The same thing can be done as regards Generals Sykes and Morell, division commanders under General Porter, and hosts of officers and men still live to testify to the truth.

Why did not the Recorder ask General Sykes if he knew of such an insult being offered to General Pope? Why did he not ask that question of General Morell, or General Butterfield, or General Buchanan, now, alas, no longer living? Why not, instead of relying upon this unknown spy?

Comment is unnecessary.

No words in criticism of General Pope were ever uttered by General Porter to any of the officers who fought under him.

Not one has heard him criticise General Pope, or seen him act discourteously, or as though he would not do his duty toward him.

But two more witnesses are called to support the government view of *animus* on the part of General Porter, to wit, the stenographer of the court-martial, Lord, and his companion Ormsby, who testifies as follows:

Q. Do you recall the purpose for which you went to General Porter's room?

(This was testified as having occurred during the previous trial.)

A. Yes.

Q. Please state it.—A. I went in company with Mr. Lord for the purpose of procuring some documents which had been offered in evidence that day, and which Mr. Lord desired for the official record, and which I desired to be used in my report for the New York Times, which I then represented.

Q. At that time do I understand that General Porter's trial was in progress?—A. It was then in progress.

Q. Do you recollect the conversation?—A. Only a small part of it.

Q. Do you recollect any remarks made by General Porter?—A. I do. One made a strong impression upon me at the time.

Q. What had it relation to?—A. It had relation to his feeling toward General Pope and General McClellan.

Q. What was the remark which he made?—A. "I warn't loyal to Pope; I was loyal to McClellan."

I do not think the improbable story of these witnesses worth any lengthy consideration.

In the first place, it is incredible that a man who had shown himself to be a calm, cool-headed soldier, wisely directing his troops in the
1362 think of battle, who had never confided his opinion of his commanding general, General Pope, to one of his own military family, who ate with and slept near him, sharing all his hardships, and who saw his every movement, heard his every word; who had shown himself extremely reticent on that subject to all men save Generals Burnside and McClellan, who he thought could do some good service in the matter—it is, I say, incredible that such a man should unbosom himself to comparative strangers—the one whose professional duty was that of a recorder, and the other whose professional duty was that of a gleaner and disseminator of news for a journal hostile to the accused!

In the second place, Ormsby says General Porter's language was: "I *warn't* loyal to Pope; I was loyal to McClellan."

This word "warn't" Ormsby swears is the precise word used; and it is clear that coming, as is alleged, from the lips of an educated gentleman, this slang word expressed simply the indignation or contempt that General Porter felt at the charges that were heard on every hand that he was true to McClellan but not to Pope.

The witness "regarded it as an exclamation made in an excited state of mind."

The witness Lord said the words he heard were uttered "in soliloquy," "a remark made to himself," "an impulsive remark," under "excitement."

Now, what a strange thing is this! We know that detectives in disguise are frequently put in cells of accused persons, in order, by artful conversations, mock confessions, and expressions of sympathy, to wring confessions from their victims.

But nothing of this sort was done here. There does not seem to have been any conversation leading up to these exclamations. The theory of the government must be that General Porter's conscience was too much for him, and that he selected these grave and reverend reporters as father confessors, to whom to utter his contrite confessions.

These father confessors seem not to have that unity of mind which is desirable in such cases. They mutually agreed to keep the matter untold, as it might do harm to General Porter.

But William Blair Lord confided it immediately to his wife, and then was distrustful of the other man's secrecy, saying to his wife, "General Porter said what he did *in the privacy of his own room.*"

"*Privacy of his own room!*" Publicity rather; for with those two reporters there, he might well know that for secrecy he had better have shouted into the Ear of Dionysius of Syracuse. Lord further stated, "*Without thinking of the effect of his words.*" No! No such meaning as

is sought to be placed on them could be placed upon them by a fair, candid mind. The whole story shows that the words should be received, even if uttered, as a contemptuously ironical expression, for it seems inconceivable that, without apparent motive, without any apparent anguish or repentance, but in "*passion*" (meaning, of course, anger), these words were said. Incredible! A new phase of human nature is discovered.

Lord then writes to his wife:

> After thinking it over, I have concluded it better not to say anything about it now, though I would not promise as much for that newspaper correspondent.

Yet Lord, the distrustful, was the first to tell. To tell the Judge-Advocate-General, who writes, "I listened to it and deemed it most important, and told you (Lord) I did not believe it would be necessary to introduce it in evidence, as I anticipated that the proof of his 1363 guilt would be complete without it. In that anticipation I was not *disappointed.*"

The Judge-Advocate-General *disappointed* in not convicting an accused person!

It will be observed that the Judge-Advocate made no excuse that the evidence was closed when this matter was told him, as Lord would have us believe, but that he had complete proof without it.

Well, then, is it on the theory that there is not complete proof without it that the Recorder introduces this matter here?

The Judge-Advocate-General, who was so bitter in his review for the President's eye, would have left no stone unturned to convict General Porter; but the truth is the "important" story had too improbable a look for it to be brought before the public. This story must have been fabricated in the interest of Lord and Ormsby, and, failing to be of any weight at that time, it was furbished up and produced in 1871 to oppose General Porter's appeal for a rehearing, as if, when deeds and facts proved him innocent, so foolish a story as this proved him guilty. But we must all remember that drowning men clutch at straws.

It is, I believe, conceded to be the habit of "mind-readers," of "psychologists," to become intensely absorbed—to throw themselves into a state of blankness of mind so as to render them perfectly prepared to perceive what is passing in the mind of the person to whom they have "fastened." I believe, also, that mind-readers pay no attention to facts or tangible outside incidents, but pay exclusive attention to the mind.

This seems to have been the case of Col. T. C. H. Smith, who, regardless of the true facts of this case, certainly entirely ignorant of them on the former trial, gazed into General Porter's mind and conscience and saw guilt written in every convolution of his brain and all over the walls of his heart.

Colonel Smith's testimony on the former trial and on the present investigation show what an excitable man he is, and his own detail of the conversation between General Porter and himself shows it to have been one in which he himself was much excited, while he confesses that General Porter was not so. Captain Monteith, General Porter's staff officer, who remembers the interview, states that General Porter said, after Smith had left, that Colonel Smith "had treated him with *insolence*," and that "General Porter seemed vexed and disgusted with the manner and conduct of" that officer.

This must have been the fact. Colonel Smith is of that class of men, evidently, who believe profoundly in self, but in no one else, and that class of men express themselves often in a uselessly offensive way. When their conduct is resented they attach the entire blame to the other

party, and Colonel Smith was so earnest in attaching the blame to General Porter that he regarded him as inimical not alone to himself but to General Pope, and to such an extent that he would fail him, and failing him would fail the nation. What a terrific storm has he brewed from a cloud the size of a man's hand! Colonel Smith's excitability at remarks made which seem to be derogatory to his dignity is shown by the excited reply that he made to General Pope, who, after being told by him that General Porter would "fail him," replied, "How can he fail me? He must fight where I put him." This "impetuously and perhaps overbearingly and in an excited manner," or, as Colonel Smith now says, in such a manner that it amounted to *snubbing* him. Not bearing resentment toward General Pope, Colonel Smith, instead of striking back at his snubber, quickly increased his own anger at General Porter and exclaimed he "was certain Fitz-John Porter was a traitor"; that he
1364 "would shoot him that night, so far as any crime before God was concerned, if the law would allow me (him) to do it." Smith says this feeling about shooting General Porter "was roused, perhaps, by the manner in which General Pope took his opinion in regard to the accused." He "did not ride away from the accused with that feeling."

It seems that Smith at that interview told General Porter he had sent ammunition to him, and that General Porter had not received it. Smith was surprised, and said he had sent it forward.

Everything was in confusion at that time, as the evidence shows, and no wonder General Porter said "it was going where it belonged; that it was on the road to Alexandria, where we were all going."

This remark was brought on by General Porter's saying "he had no officers to take charge of it and distribute it or look it up," or something of that kind, to which Colonel Smith excitedly replied, and I rather suspect the tone *was* insolent, "that he could hardly expect us at headquarters to be able to send officers to distribute it in his corps."

I rather suspect that whatever was said by General Porter, or whatever was his tone or manner, was the result of Colonel Smith's own words and manner, and that their import was magnified by Colonel Smith when he, in that common way that egotists have, considered himself sneered at, and himself the commanding general.

General Porter's remark about General Pope's being "hurt if the wounded were left behind" was a remark made in the interest of mercy, and cannot be distorted into an expression of disloyalty, as Colonel Smith would have us believe it to be.

Singular that General Porter should invite Col. T. C. H. Smith to dinner to palliate his offense after having thus shockingly revealed his intended treachery, when he (Porter) was telegraphing to Burnside almost the exact words he used to Smith, and those words he authorized General Burnside to use in any manner he saw fit in order to do good. Those words were sent to the President of the nation, and he never invited the President of the United States to come and take dinner, or General Burnside to come and take dinner with him in order to smooth over the edge of the criminality!

Colonel Smith's inference as to the cause of this invitation to dinner is about as comical as his inference as to General Porter's treachery, so called, being revealed to him.

It is sad that such a silly story could be used, even in times of excitement, with such tragic effect.

TELEGRAMS TO GENERAL BURNSIDE.

But the dispatches written by General Porter to General Burnside have been regarded as showing his evil animus toward General Pope,

and concerning these I shall quote General Porter's own words in his statement to you:

General Pope has made such improper use of my telegrams that I deem it proper to explain their origin and proper use.

General Burnside, who was opposite Fredericksburg, felt that early and reliable information of General Pope's army, and as far as possible of the enemy, was vital to the usefulness as well as to the safety of his command. Information furnished by General Halleck for his guidance proved so inaccurate on receipt as to mislead and delay, and thus destroy confidence in that source. I so reported at the time to General Burnside.

And the Recorder, taking up the language of General Porter here, that General Halleck's reports as to the position of the Army were so inaccurate as to be untrue, considers it as a slur, when it was
1365 merely in pursuance of a plan to get correct information that General Porter telegraphed to General Burnside; and that shows the persistent misrepresentation of almost every innocent act of General Porter.

At General Burnside's solicitation, and to expedite my own movements and supplies, I established telegraphic communication with him.

General Burnside asked me to dispense with the formality of official correspondence, and to send him everything of interest, and my own impressions of the state of affairs.

This correspondence I maintained till I left Bristoe at 7 a. m. August the 29th. At that hour (the distance to the wires becoming too great for safety) I gave it up, trusting to one which must soon be opened and be more expeditious and safe through Centreville, toward which General Pope's order of 3.30 a. m., received at 5.30 a. m., urgently called me.

On the 27th of August, when I reported in person to General Pope at Warrenton Junction, Jackson and Stuart held General Pope's line of communication with Washington. I then informed General Pope of this channel, and urged him to use it, but he declined. General Burnside informed me, as an incentive to frequent communication, that President Lincoln, to whom he was sending many of my dispatches, was without information, and deprived of all other means of hearing from the Army, and was often calling for information from me. Under the circumstances, I felt it my duty to General Burnside, to the forces with which I was serving, and to the government that I should not only give information, but that I should withhold nothing which would give the military authorities the means of forming a correct estimate of our condition.

My dispatches were frequent. Each transmitted an order of march from General Pope, and gave information of the rapidly changing phase of affairs, which made his orders often improper to execute.

Now, General Porter is not alone in this criticism. General McDowell joins him in it:

In some cases they suggested how to take advantage of the enemy's errors, and to provide against the efforts of past and other inevitable losses on our side. They exhibit a state of affairs either misunderstood by General Pope or much changed after his orders were issued. Their accuracy, now fully established, shows that I was better acquainted than General Pope was with the positions and movements of the contending forces and with the danger to ours. Their value was acknowledged by the President, in person, to me on the battle-field of Antietam.

During this time I had taken for granted that the original plan of the campaign, as I understood it, was to be carried out in full faith. I knew nothing to the contrary. I thought that the main body of the Army of the Potomac was landing at Aquia Creek, and would join by the line of the Rappahannock; that the Army of the Potomac and the Army of Virginia, under their respective commanders, McClellan and Pope, would co-operate and be manœuvered by one head—General McClellan. I did not then know or suspect that "it had been decided that General McClellan was to have nothing to do with the campaign."

After August 20, when I left Fort Monroe, I received no instructions from Genera McClellan. His instructions had been to hasten to, and give to, General Pope alll possible help. From August 23 to September 2 I heard nothing whatever from him or of him. I knew nothing whatever of his status in regard to the Army. I believed that he still commanded the Army of the Potomac, and that my service under General Pope was temporary. Hence an occasional reference to General McClellan in my dispatches to General Burnside. Under this belief, and knowing that the main body of the enemy had passed to the right, leaving his rear comparatively very insecure, I suggested, August 27, 1862, (see dispatch No. 20) that I might be recalled to the Rappa

hannock, there to unite with the Army of the Potomac or with Burnside, in order either to push to Richmond, now defenseless, or to strike upon the enemy's rear near Orange Court-House. Either of these movements I felt sure would arrest the enemy's almost unimpeded march towards Maryland, and would give time at Washington for ample preparations (also suggested) to prevent the crossing of the Potomac. All this will be seen in my dispatches.

Before I united with General Pope reverses had come upon him, and, from a campaign conducted as this was, others at least as serious seemed inevitable. The Army had no confidence in his management, and my suggestions were only a part of the prevailing wishes of the Army, or indicative of the apparent means to remedy the effects of past failures, or to alleviate those which seemed inevitable. I asked General Burnside "to make use of my dispatches to effect any good purpose," and, though addressed to him, I expected the government would act upon them, in all probability through General McClellan, the only officer in whom, as I then knew, both armies had confidence.

1366 Such was the origin, the object, and the tenor of those dispatches. I had nothing to conceal. When I found the prosecution before my court was seeking in them something evil on my part, I immediately brought forward all I could get. Conscious of my own innocence, I gave every assistance to aid their presentation to the court.

Why, he has been bringing forward everything he could get in this investigation. The fact is, he cannot get everything.

All the prosecution claimed that these dispatches proved was that I had no favorable opinion of General Pope or of his ability to conduct the campaign. The same charge could have been made against many officers of high rank whose patriotism has never been suspected.

Because I was supposed to entertain an unfavorable opinion of General Pope, it was undertaken to infer that I could not, or would not, do my duty to him, to the Army, and to the country.

With the exception of those presented by the prosecution, my dispatches, when offered, were excluded, and at the close of the trial, when all the injury to my case that could arise from their exclusion had been done, some of them were admitted to the record, but so disconnectedly as to destroy the effect of the honest object of all the dispatches. I have, however, in closing this subject, to state that on the battle-field of Antietam President Lincoln, in person, gave me his congratulations for the past, his warmest wishes for the future, and his "thanks for having furnished these messages and letters—the only correct information received at the time from the Army—and which had led to the happiest results."*

In regard to these dispatches the Judge Advocate-General said in his review:

As the *animus* of the accused toward his commanding general in pursuing the line of conduct alleged against him must largely affect the question of his criminality, and may furnish a safe and valuable light for your guidance—

(he addressing the President of the United States, not the court)—

in determining points *otherwise left doubtful* by the evidence, it is proper that it should be ascertained before entering at large upon the review of the case which you have instructed me to make.

Well, as there are now, I submit, no points *left doubtful* by the evidence in the case of General Porter, there is not much necessity of dwelling long upon them. They were addressed to a superior officer under whose command he was till August 26th. They were written during the 27th, 28th and 29th. They were not calculated to arouse any insubordination among the troops or officers. The information they contained was the *truth*. His prediction that "the next thing will be a raid on our rear by Longstreet who was cut off" was quite accurate. Longstreet did come through Thoroughfare Gap, and met General Porter at Dawkins' Branch. The fault was not General Porter's. I blame nobody; but the duty of keeping Longstreet back from joining Jackson was that of Generals Ricketts and King, judges of

*The timely recall of the Army of Virginia under General Pope, and the success at Antietam, of which we were speaking.

General Porter upon his court-martial, and of General McDowell, their commander, who is an accuser of General Porter to this day.

General Porter's recommendations as to movements to be made seem to have been made with an earnest desire of doing something to remedy the hopeless condition of affairs of which he saw evidence on every side.

So innocent of any evil intent was General Porter that he even said to General Burnside, in one of his strongest telegrams, "Most of this is private, but if you can get me away, please do so. Make what use of this you choose, so it does good."

Thus he gave permission to General Burnside even to show the telegrams to the President and to General Halleck. And General Burnside, to whom they were written, and who knew as a friend and former commander just what requests of his own and what feelings of their author prompted their writing, saw no guilt in them and showed them to the President and General Halleck.

1367 What harm could they do?

No subordinate officer ever heard General Porter decry General Pope, or show by his manner that he had any lack of confidence in him.

Gentlemen, I am not a military critic, but I do think military critics of the future will say that it was a pity the Army of the Potomac was not the greater part of it left, as General Porter desired, on the Peninsula to attack Richmond, defenseless as it was when General Lee moved against General Pope; that it was a pity General Porter's suggestion in his dispatch to General Burnside that he should be ordered with a larger force to push toward Orange Court House, in the enemy's rear, had not been adopted! But those useful dispatches were distorted in their interpretation and perverted from their true meaning.

General Porter was found guilty on the 10th of January, 1863. On the 13th the whole proceedings were transmitted to the Secretary of War, to be laid before the President of the United States. But on the 12th the President (and not on the 13th, as the Judge-Advocate-General mistakenly says) had requested the Judge-Advocate-General "to revise the proceedings of the court-martial in the case of Major-General Fitz-John Porter, and to report fully upon any legal questions that may have arisen in them, and upon the hearing of the testimony in reference to the charges and specifications exhibited against the accused and upon which he was tried."

The impolicy of a law allowing a prosecuting officer to sit as a *quasi* court of appeals on a case in which he has been zealous in the performance of his part is shown by a perusal of the remarkable document produced by the Judge-Advocate-General for the information of the President.

In no court that I know of can a judge of first instance now sit and hear appeals from his own decisions.

In this instance the Judge-Advocate-General acted as prosecutor, and in reviewing the case he became in effect the President, for the President naturally did not have the evidence until January 19, 1863, and two days afterward confirmed the sentence.

Of course Mr. Lincoln could not have had time to read and understand the mass of evidence taken before the court-martial, it being then in writing and not reduced to print.

What wonder, then, that Mr. Lincoln was misled? What wonder that, not having had the opportunity during those anxious hours of the war, overburdened as he was with the duties of his high office, taking the words of another, and a prosecutor and a reviewer, instead of the evi-

dence, he concluded that General Porter's announcement to Generals McDowell and King of his intention to retire on Manassas was a positive *proof* of his having retreated, when the proof was to the contrary? What wonder was it that the President confirmed the sentence?

What wonder that he read General Porter's announcement to his son, Robert Lincoln, and declared "that the case would have justified, in his opinion, a sentence of death"?

But also, when he heard there was evidence, besides that already introduced, that would show General Porter to have been innocent, what wonder that he declared two years later to Governor Newell, of New Jersey, his intimate friend, "that if any new evidence exculpatory of General Porter could be introduced he would be very glad to give him opportunity to have it presented"?

Governor Newell's testimony as to Mr. Lincoln's lack of personal examination into the record of the court-martial is borne out by the facts as well as the dates I have related.

1368 The governor's testimony is as follows:

A. I stated to the President that I had called, at the solicitation of friends of General Porter in our State, to say that, in their judgment, the finding of the court was very severe; and that, in view of new evidence being in possession of General Porter, we desired to have the case reopened, in order that he might be reinstated or the sentence revoked. Mr. Lincoln stated that he had not been able to give that personal attention to the case which its merits required; that he had accepted the opinion of the Judge-Advocate-General and of the War Department as the basis of the action; that if any new evidence exculpatory of General Porter could be introduced, he would be very glad to give him opportunity to have it presented; that he had a high regard for General Porter personally and as a soldier, and that he hoped that he would be able to vindicate himself in that way. I had at least two conversations with the President on that subject, the import of which I have given you. I do not recollect the precise language; but it made a special impression upon my mind at the time, and my recollection has been fortified by a letter which I wrote to Governor Randolph, and which reminds me of this particularly.

Q. Did you hold any official position at that time?—A. I think I was a member of Congress elect at the time of that conversation.

Q. Your personal and political relations with the President were what?—A. Very intimate and friendly.

Q. Had you any relation with General Porter?—A. I have never seen the general but twice; I would not have known him ten days ago if I had met him in the street.

Q. Governor Randolph was governor subsequent to your time, was he not?—A. I don't recollect the date of his term; I think it was about that time.

GENTLEMEN OF THE BOARD: For sixteen years has General Porter, personally and through his friends, strenuously endeavored to have his case reopened. He was crushed to earth, but like truth he has risen again. He has borne the obloquy and vituperation that have been heaped upon his head for all these weary years by millions of his countrymen, who judged of him not from knowledge of his deeds, but misjudged him simply because he was convicted, and because of the partial and distorting statements of the facts of the case with which the press of the country has teemed.

His persistent denial of guilt, his earnest endeavors to have his case subjected even to the most searching investigation, and his manly bearing during all his affliction, furnish in themselves strong proofs of his innocence.

The government has summoned on this investigation a hundred witnesses without proving his guilt. Every person that could be reached has been summoned, and save his chief enemy they have all given their testimony.

What has been shown by the government to prove this petitioner to have been guilty of the charges preferred against him?

Nothing of moment.

But I submit that his character as a fearless and efficient soldier, earnest in the performance of his duty at all and every moment of his service in the Army, has been clearly shown by witnesses whose reputation is above reproach.

In conclusion, gentlemen, I confidently believe you, brother-soldiers, experienced in the cares and responsibilities of war, will weigh the testimony given in this investigation, and on the former trial, with that patience and thoroughness evinced by you throughout these proceedings.

I confidently hope that you will be able to give the verdict back to the President and to the people of the United States that MAJOR-GENERAL FITZ-JOHN PORTER IS NOT GUILTY, and never was so, and that his actions and intentions were upon the former trial, and ever since have been, MISUNDERSTOOD!

The Board then, at 5.10 o'clock p. m., adjourned until Monday next at 11 a. m.

1369 FORTIETH DAY.

WEST POINT, *Monday, January* 6, 1879—11 *a. m.*

The Board met pursuant to the foregoing orders and adjournment.

Present, Maj. Gen. John M. Schofield, U. S. A., Brig. Gen. A. H. Terry, U. S. A., Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

ARGUMENT OF JOHN C. BULLITT, OF COUNSEL FOR PETITIONER.

Mr. BULLITT said: May it please the Board, the accusations against General Porter, without following the technical form in which they were drawn in the charges and specifications, may be stated as follows:

I. That General Porter did not march, as ordered to do, at 1 a. m. of the 28th of August, 1862, from Warrenton Junction for Bristoe Station, but delayed moving for two hours, or until 3 a. m.

II. That he did not obey the joint order of the morning of August 29, 1862, to General McDowell and himself, to move towards Gainesville.

III. That on the 29th of August, 1862, being with his army corps, between Manassas Station and the field of battle then pending, and within sound of the guns and in the presence of the enemy, and knowing that a severe action, of great consequence, was being fought, and that the aid of his corps was greatly needed, he did fail all day to bring it on the field, and did shamefully fall back and retreat from the advance of the enemy, without any attempt to give them battle, and without knowing the forces from which he shamefully retreated.

IV. That while a severe action was being fought on the 29th August, 1862, by General Pope, and believing the troops of General Pope were sustaining defeat and retiring from the field, he did fail to go to the aid of General Pope, and retreated away and fell back with his army, and left to the disasters of a presumed defeat General Pope's army, and failed, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country.

V. That he disobeyed the order of 4.30 p. m. of August 29, 1862, to attack the enemy on his flank or rear.

VI. That he disobeyed the order of 4.30 p. m. to attack the enemy, and retreated from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was ordered to make to secure a decisive victory, and to capture the enemy's army; results which must have followed from said flank attack had it been made by General Porter in compliance with the said order.

These six propositions present the substance of all the accusations upon which General Porter was found guilty by the court-martial which tried him, and rendered its decision January 10, 1863; and it appears to me that the first inquiry should be as to the precise object of this investigation, and the nature of your duties in connection with it.

You have been directed by the President to examine the record and proceedings of the court-martial, to hear such new evidence as is on file in the War Department, and such other evidence as may be pre-
1370 sented to you, and to advise the President of what, in your judgment, may be his duty in the premises.

The duty devolved upon you then is, I think, in one sense appellate. That is, you are to review the proceedings of the court-martial, and to examine the evidence which was submitted to them; you are to examine the findings of that court; you are to examine the opinion which was submitted by Judge-Advocate-General Holt to President Lincoln, and you are to determine whether the evidence was sufficient to warrant the findings of that court.

However, you are not bound to stop at that point. You have then the right to examine the testimony which has been submitted to you from the record of the original proceedings, together with the new testimony, and you are to determine, in view of all which is thus properly before you, whether the findings of the court-martial against General Porter are supported in fact and law, and whether they should be allowed to stand.

In examining the proceedings before the court-martial, and the findings of that court, we must recognize the fact that they are entitled to very great weight. We must admit that *prima facie* you should assume that they are right, or were right at the time, with the light which that tribunal had before it, and that it is for us to satisfy you, either from the proceedings of that court, and the evidence which was before it, or from the subsequent evidence which we have introduced, that it was in error. We must begin with the assumption that the laboring oar is upon us; that the onus is upon us to show the errors into which the court-martial fell then, owing either to a want of proper construction of the evidence before them, or the want of knowledge of the facts which you now know as developed by the subsequent evidence.

So also with reference to the approval of the sentence of General Porter by President Lincoln. You should, as we think, regard that action not only with respect, but accord to it much weight, as due to the opinion of the President of the United States in a case such as this.

But while we concede all this, still if we are able to show you that the approval of the findings of that court, and that sentence, by President Lincoln were due to a misapprehension on his part, and that he misunderstood the facts, we have a right to ask you to disregard his approval altogether.

You are acting under what I suppose may be called the pardoning power of the President. The sentence against General Porter was, in

part, executed; but in part it is being executed every day that he lives. Aye! and it will be executed upon his posterity as long as it stands. He was dismissed from the Army under that sentence; and the effect of a part of that sentence is to disqualify him from holding any office of honor or profit under the United States Government—a matter which probably is not of the slightest importance to him so far as the profit is concerned; but, so far as it affects his good name, his honor, and his reputation, it is of the last importance to him, and those who cling to him and surround him, that he should be vindicated.

He is not invoking the pardoning power of the President upon any ground of clemency or mercy; he does not ask that the President of the United States shall say to him, "You shall be pardoned, because you have suffered," or "because you have suffered beyond what your crime deserved." He is not asking that. And to-day, if the pardon of the President, or the revocation of this sentence, were to depend upon his accepting it upon the concession that he had been guilty of the crimes with which he was charged, and that he had suffered
1371 enough for those crimes, he would spurn the offer. If he cannot obtain what he believes he deserves, upon the ground, and the ground alone, that the sentence was founded upon error and misapprehension, and that injustice was done him, then he is unwilling to accept anything from the government or its representatives. He recognizes that in asking you to look at the findings of the court-martial and the proceedings before them, the duty is incumbent upon him to meet these charges frankly, without fear and without resort to technicalities, and that every fact connected with this transaction, and every word which he has uttered in reference to it, must be ransacked to see whether there can be found any ground upon which that sentence or those findings can be sustained.

In approaching this subject, it seems to me that the first thing in order is to examine the proceedings of the court-martial and see how far the evidence submitted to them sustains the charges which were made.

ORDER TO MARCH AT 1 A. M. AUGUST 28, 1862.

The first point that presents itself is that of disobedience to the order to march at 1 a. m. of August 28, 1862. He was found guilty of disobedience under the ninth Article of War, by reason of having failed to march at one o'clock on the morning of August 28, as directed in that order. In the testimony to which I shall refer, I shall only read from one of the witnesses who was examined on behalf of General Porter, because I believe that what General Butterfield says on page 185 (O. R.) states the whole position, and states it so clearly that it is almost unnecessary to read any other—certainly unnecessary for me to do it. You no doubt recollect the effect of the testimony of the witnesses upon this point. General Butterfield says (page 185, O. R.):

A. The order, I believe, was for General Porter to move his forces at one o'clock in the morning to Bristoe Station. He handed the order to General Morell or to General Sykes, who were present, and said there was a chance for a short nap, or something of that sort (I do not remember the exact words), indicating that there was but little time for preparation. General Sykes or General Morell, I do not remember which (one or both of them), spoke with regard to the fatigue our troops had endured, the darkness of the night, and the fact that, in their judgment, the troops would be of more service to start at a later hour than they would be to start at the hour named. In reply to these remarks, General Porter said, rather decidedly, that there was the order—it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertions that had to be made to comply with it. I do not state that as his exact words, but as the substance of what he said. Captain

DeKay, who brought the order, was then present, and was asked some questions about the road. He stated that it was very dark, and that the road was full of teams. General Sykes, I think, suggested that it would be impossible for us to move at the hour named, if the road was full of teams; that they could not find the way. General Porter called two aides and sent them off to investigate the condition of the road, and to ask General Pope to have the roads cleared so that we could come up. When we got outside, the darkness was so apparent (to use such an expression), and it seemed to be such a matter of impossibility to move, that General Porter said, "In consideration of all the circumstances, I will fix the hour at three o'clock instead of one. You will be ready to move promptly." And I subsequently wrote an order, in General Porter's tent, for my command to be in line to march at three o'clock.

This testimony of General Butterfield is confirmed by General Sykes, by General Morell, by General Warren. Substantially, it is confirmed by almost all the witnesses who have testified on both sides.

When we come to examine the evidence which was relied upon by Judge-Advocate-General Holt, before the court-martial, under this specification, we find that he first recited Captain Duryea's testimony. He said:

The first answer to the position taken in the defense, that in consequence of this darkness it was impossible to obey the order, is found in the testimony of
1372 Captain Duryea, who deposes that on the night of the 27th of August he marched with his command from Warrenton, and did not halt until about midnight, and that "he did not experience any unusual difficulties growing out of the night." (Page 303, O. R.)

It would be supposed that the Judge-Advocate, when citing Captain Duryea for the purpose of proving that there were no unusual difficulties growing out of the night, would have looked through the remainder of his testimony to see how far that statement was sustained by the whole of his testimony. I have read all that was cited by the Judge-Advocate, in his opinion, from Captain Duryea; and I will now read what he omits from his opinion:

Q. Was the part of the road over which you passed obstructed by wagons or otherwise?—A. *The march was very slow. I should think they halted every ten or fifteen minutes. It was a very tedious march.* (Page 116, O. R.)

Again:

Q. Where were you, and in what position, on the 27th of August last?—A. We were on the march from Warrenton, and on the night of the 27th of August we halted, I should think, some *three or four miles* this side of Warrenton.
Q. At what hour of the night did you halt?—A. About midnight. (Page 115, O. R.)

Now, the evidence of Captain Duryea was relied upon by the Judge-Advocate to prove that there were no unusual difficulties in the way of marching that night, and yet Captain Duryea says that they halted every ten or fifteen minutes, and that it was a very tedious march. The gentlemen of the Board know a great deal more, of course, than I do about the unusual difficulties in the way of marching. But I suppose that it does not require a soldier to know that where troops are marching from about dark until midnight, six or seven hours, and they have to halt every ten or fifteen minutes, there must be some unusual difficulties in the way of marching. Further than that, he testified that they halted, "I think some three or four miles this side of Warrenton." They left Warrenton by daylight, and they were until midnight marching three or four miles. In other words, they marched probably not over half a mile an hour. Is it possible that this force would have taken five or six hours to march a distance of three or four miles, unless there had been some unusual difficulties in the way? It appears to me that when the Judge-Advocate was relying upon his testimony to prove that there were no unusual difficulties, if he had only turned to the other portion of the testimony of this same witness, for the purpose of ascer-

taining what were the real facts, he would have seen that the facts stated by the witness entirely destroyed the opinion expressed by him, that there were no unusual difficulties.

He then relied on Major Barstow; but all that witness says is:

I have no vivid recollection of that night beyond other nights. It seemed to be very much like other nights on which we moved.

He adds that no difficulty was experienced in marching the troops up to the hour at which they encamped. He says he reached Buckland Mills at nine o'clock, and started from there at daylight the next morning. He had no special occasion to observe the character of the night after nine o'clock (page 111, O. R.).

I suppose that the testimony of that witness would be worth just about as much as that of any one of the gentlemen in this room if he were asked to-day what was the character of the night of the 27th of last August. The Board may have better memories upon that subject than I have, but I doubt whether any one of you, unless you have special occasion to remember it, could say what the character of the night of the
1373 27th of last August was. You might be able to remember it if there was something to impress it upon your minds.

Another witness that the Judge-Advocate-General relied upon was Lieutenant-Colonel Myers, and of him he said:

Lieutenant-Colonel Myers, who, as chief quartermaster to General McDowell, had charge of the trains passing over this road on the night of the 27th, states that he was up nearly all night. He was asked the following question:

"Q. In view of the condition of the road, as you described it, and also the character of the night, was or was not the movement of troops along that road practicable that night?"

He replied: "I do not know of anything to hinder troops marching along the railroad then. There was a road running each side of the railroad. I should think it would have been easy for troops to move along there, although I may be mistaken in that." (Page 303, O. R.)

I am giving you the testimony which is cited in the opinion of the Judge-Advocate. I want to show that the witnesses upon whom he relied in fact proved the very contrary of that which he deduced from their testimony. Now, that which is omitted of the testimony of Colonel Myers upon this subject is this:

I was up nearly all night. It was quite dark. There was no moon. It was a dark night. I could not state about it toward morning particularly. (Page 108, O. R.)

And again:

I think all my train went into park. The wagons were coming in all night, and I could hear the wagons rolling nearly all night. No trains passed me that night. (Page 104, O. R.)

He halted within a short distance of Bristoe Station. He says:

There were no wagons in front of me. I was with the head of the train.

Q. You have been understood to say that the wagons were rolling all night?—A. Yes, sir; coming into park, as they got along all night. The rear wagons take a long time to come up in a long train of *two thousand or three thousand wagons.*

Q. Then they were coming into park all night from the road?—A. Yes, sir; wherever they could find a place to park, they parked. (Page 110, O. R.)

Thus you observe that the Judge-Advocate in relying upon Colonel Myers, cited him to prove that there was no difficulty in marching along that road that night; and the Judge-Advocate took no notice of the other facts which this witness states, that there were from two thousand to three thousand wagons along the road upon which General Porter would have been obliged to march. I feel, of course, some little diffidence in talking to men who understand that subject so much better than I do,

still I do not think it requires a military man to form an opinion of the obstruction which would be offered in a road by two thousand or three thousand army wagons; for it is a very simple question of calculation: forty feet to a wagon and team, multiplied by three thousand wagons, would make one hundred and twenty thousand feet, that is equal to twenty-three or twenty-four miles, strung out on a line; if doubled, equal to eleven or twelve miles; and if put four abreast, equal to four or five miles. Now, assuming that upon this road anywhere army wagons were moving four abreast for five miles, can any sane man say that this was not a serious obstruction to marching along that road on a dark night? Would any commander of a force, who had any regard for the efficiency of his corps and the condition of his troops, when he was to perform a duty such as General Porter knew was before him—would he feel that he was justified under such circumstances to march over a road with such obstructions upon it? It may be said that it is proven here that on some parts of the route there were roads upon each side of the railroad. But, on the other hand, it is also proven that for
1374 a considerable portion of this distance there was a single road.

It is further proven that a portion of this road was a recently-made army road through woods, and with stumps in it. Now, I submit that the evidence cited by the Judge-Advocate shows the entire mistake into which he had fallen upon this whole subject; and that his mind was so filled with prejudice, so poisoned against General Porter, that, able as he was, and thorough in the performance of his duty as he was, he was unable to review this evidence as it ought to have been examined at that time.

The Judge-Advocate also referred to General Reynolds as sustaining the ground that the march could have been made by General Porter that night. He said:

General Reynolds, called by the accused, and who entertained a very strong estimate of the embarrassments in the way of the march of the troops on the night of the 27th over the road to Bristoe Station, admitted on cross-examination that, dark as was the night, troops could have marched, provided that they had had a road and a guide to conduct them, both of which the command of General Porter had. (Page 303, O. R.)

Now, when you look at the testimony of General Reynolds, you will find that this was the question put to him by the Judge-Advocate:

You say that the night of the 27th of August was too dark to have marched troops over a country not known to them, without either a guide or having a road to follow; suppose they had a road, and a guide who had passed over the road a few hours before, who was acquainted with it, or professed to be acquainted with it, and who proposed to conduct the army, and that army was to march during that night over one of the *country roads of Virginia*, would it have been practicable to do so?—A. I suppose it would. (Page 171, O. R.)

That was the question put to General Reynolds, and the answer upon which the Judge-Advocate founded a quotation from General Reynolds as supporting the view for which he cited it.

He omitted, however, the following:

By the ACCUSED:

Q. What was the character of that night?—A. It was a very dark night, as was the succeeding night. I recollect both of them distinctly, from having been about a good deal until after twelve o'clock each night.

Q. Did you consider it too dark a night in which to march troops in masses over an unfamiliar country?—A. I should think so, certainly, without a guide or marching on roads. I do not think it possible to have marched troops on such a night, without having a good guide or marching on a road.

Q. If the road over which you were to pass were, to some considerable extent, obstructed in several places, would you have regarded the marching of large masses of troops on that night as practicable?—A. *I should not.* I should have considered it as a very precarious undertaking. (Page 170, O. R.)

We must suppose that a man in the position which General Reynolds occupied, could have formed as good a judgment as to what should have been done under the circumstances as any man who could have been called upon at that time. Had the Judge-Advocate put the question to General Reynolds in the form in which it must present itself now, that is, if he had put in as a hypothesis that there were three thousand wagons upon that road, that it was not an ordinary Virginia country road, but that it was in places a narrow, recently-made army road, with stumps in it, and running through thick woods, and crossed by small streams, and by the railroad, on parts of which trains were running, as has been proven by abundant testimony—in other words, if he had stated the facts as you know them to have really existed—then General Reynolds' opinion would have been even more emphatic, if he could have made it so, than as expressed in his answer last quoted.

1375 Now we come to the citation of the Judge-Advocate from General Heintzelman, to the effect that it was not impossible for troops to have marched over that road on the night of the 27th. But he omitted to note that part of General Heintzelman's evidence which seems to me to be to the contrary:

> Q. Was there, on the night of the 27th of August, a route of march practicable for General Porter's troops from Warrenton Junction to Bristoe Station, so far as you have knowledge of the country?—A. That would depend upon where the wagons were; *there were places where the wagons would have entirely obstructed the road.* (Page 82, O. R.)

What could be more conclusive than this? How can any man in his senses, knowing the fact that these wagons, two thousand to three thousand or more in number, were upon the road over which General Porter had to move, gravely quote General Heintzelman as authority for saying a night march under such circumstances was practicable?

The Judge-Advocate also relied upon General Pope.

In his opinion the night was good for marching and the road was clear; but even if the roads had been entirely blocked up, *the railroad track was clear*, there was no obstruction to the advance of infantry. It might be inferred from this that the march would have been but a pleasant summer evening's excursion, for he seems to think that there could not have been the slightest difficulty in nine thousand or ten thousand men with artillery marching over the railroad track. Well, it may be that that is a pleasant road for the general of an army; but I do not believe anybody except such a man would think that a railroad track was a reasonable road for a private citizen to go over, much less for an army of nine thousand or ten thousand men with artillery.

But what does General Heintzelman say about marching over the railroad track? General Heintzelman says (page 81, O. R.):

> It was very difficult to march on the railroad at night. *Some of the rails were torn up, ties piled upon the track, culverts destroyed, and bridges burned.*

The importance of following up this testimony, as I have endeavored to do, in reference to this point, seems to me to be this: I have endeavored to show you from these quotations of testimony, on the part of the Judge-Advocate, that he was relying on the testimony of witnesses who themselves show that the point for which he was contending was not sound, and that if he had only given a fair or full summary or statement of the whole of their evidence, the exact reverse of the inferences drawn by him would have been conclusively established.

The Judge-Advocate says the manner of marching was an indication that General Porter was not trying to execute the order in good faith. But General Porter's order to Colonel Brinton, at twelve o'clock at night,

to clear the road; his requests to General Pope to assist him to clear the road; his orders to his staff and their efforts; General Porter's own exertions to get the wagons out of the way; General Pope's declaration that General Porter was reported as "coming along slowly," pushing *the wagons out of the road;* the evidence of Generals Sykes and Morell and Butterfield, and of the other officers of Porter's command who were examined as to the presence of the wagons and the extreme difficulty of marching on account of them; the fact that General Porter's general officers all urged the delay; the fact that he only yielded to their urgency a reluctant consent, after seeing that the darkness was so "apparent," and it was "such a matter of impossibility to move," as was proven by General Butterfield; the fact that the troops were in no condition to march—all this had no weight with the Judge-Advocate-General. He brushes them away as though they were but feathers,
1376 while the slightest expressions of an adverse character, no matter from what source they came, were magnified to the last degree.

We would have no occasion to take issue with the Judge-Advocate-General on this matter, if it was not that this opinion, this revise by him, has a most important bearing upon this case, and that this Board, as I think, must give to that opinion the most careful and most attentive consideration. It is entitled to such consideration by reason of the distinguished official position held by the Judge-Advocate; and more than that, by reason of the very able character of the officer who filled that position. No man who has any familiarity whatever with the character of the Judge-Advocate-General, or his public career, can fail to accord to him the very highest degree of intellectual power. His opinion, of which I am speaking, was given to the President of the United States, in response to written instructions, dated January 12, 1863, "To revise the proceedings of the court-martial in the case of Major-General Fitz-John Porter, and to report fully upon any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications exhibited against the accused and upon which he was tried." (Page 299, O. R.)

That opinion was necessarily *quasi*-judicial in its character. It was for the purpose of enlightening the conscience and instructing the mind of the President in regard to the facts involved in the most important military trial that had taken place in the history of the nation. The sentence of the court-martial was the severest that could be imposed, short of death, and to an honorable, high-toned, and sensitive nature it was perhaps worse than death. The accused had enjoyed the highest degree of confidence on the part of the President, of the Army, and of the nation. He had won signal honor and distinction on more than one hard-fought field. In soldierly attainments and qualities, in devotion to his country and to the cause in which he was enlisted, in energy, zeal, and perseverance, and in the power to command, he was regarded as the peer of the truest and best of his comrades in arms.

The conviction of such a man, by court-martial, of the crimes with which he was charged, produced a moral shock throughout the whole country. We may well imagine the effect on the mind of the President when he found that a general of such character, and one in whom he had put such trust and confidence, had been convicted, by a court of his fellow-officers, of such crimes. He instructed the Judge-Advocate-General to revise the proceedings of the court-martial, and report fully upon the legal questions, and upon the bearing of the testimony in reference to the charges and specifications. That report was beyond a doubt expected by him, and believed by him, to be a fair review of the testi-

mony both for and against the accused. The President had a right to act upon it as the unprejudiced conclusion of a *quasi*-judicial examination and review by an able and experienced lawyer, who stood in a relation to him and to the case that enabled and required him to submit, for the guidance of the President, a candid, impartial, and exhaustive summary of what was established by the evidence *on both sides*. The action of the President in approving the sentence carried very great weight with it at that time. It is entitled to the highest respect at your hands now, and we are bound to realize this, and to show how it was that this approval was made under a misapprehension as to the facts.

It is for this reason, among others, that I have deemed it proper to call your attention to the character of the "revise," or opinion of Judge-Advocate-General Holt, submitted under date of January 19, 1863, to President Lincoln, and that I shall still further endeavor to
1377 show how far that opinion was erroneous upon the points to which I have referred. I have tried and will still try to follow it closely and fairly.

The Judge-Advocate, when he comes to state the defense which was made by General Porter upon the point which we are considering, says this:

> The violation of this peremptory order is sought to be excused, or rather fully justified by the accused, on three grounds:
> First, the fatigue of his troops; second, the darkness of the night; third, the obstructions on the road, growing out of breaks and difficult places in it, and the presence of wagon-trains in motion. (Page 303.)

Having thus stated the grounds of the defense, we would naturally suppose that he would then have given the strong points in favor of General Porter, as presented by the evidence. I will read all that I have been able to find in that opinion or revise stating what General Porter's defense relied upon:

> The generals who advised and participated in the determination not to move at one o'clock deposed that their troops were very much exhausted.
> General Reynolds, called by the accused, and who entertained a very strong estimate of the embarrassments in the way of the march of the troops on the night of the 27th, over the road to Bristoe Station, admitted, on cross-examination, that dark as was the night, troops could have marched, provided they had had a road and a guide to conduct them [and there is added by the Judge-Advocate in the same sentence], both of which the command of General Porter had. (Page 303.)
> General Heintzelman testifies that it was not impossible for troops to have marched over that road on the night of the 27th, but that there would have been a great many stragglers, of which he said there are more or less on all night marches. He describes the road as narrow, but in tolerably good condition. (Page 303.)
> It is true that at twelve o'clock on the night of the 27th Lieutenant Brinton came from Catlett's Station to Warrenton Junction, and on having an interview with the accused, he spoke to him of the wagons on the road, whereupon accused directed him, on his return, to have the road cleared. On his arrival at Catlett's Station he told the adjutant to send out some men to get these wagons out of the way. He does not know that the direction he gave was complied with. (Page 305.)
> On the consultation which took place between the accused and his generals when the order was received, the opinion was expressed by the latter (and it has been repeated in their testimony) that nothing would be gained in the way of time by starting at one o'clock instead of a later hour, say three or four. (Page 305.)
> It is true that General Griffin says, "I know the artillery which followed the brigade—that is, a carriage or two of the artillery which followed the brigade—got stuck in the mud or in a little creek, and had trouble in getting out." When more closely questioned as to the cause of the halt, he said, "I halted because I found, when I got to the point where I did halt, that I had only a portion of my brigade with me. In the darkness, by some accident or other, we had become separated, and I halted to get my brigade together, and the artillery, I presume, is what detained us there until we started again. That is my impression. I do not know that positively General Morell was in command of the division." (Page 305.)

I have given you all that the Judge-Advocate cited as sustaining General Porter's defense. I have looked to see what portion of the revise or opinion by the Judge-Advocate, which was devoted to this particular subject, applied to the elucidation or setting forth of the testimony, upon this point, offered by General Porter. While four pages are devoted to this subject, but thirty-six lines of those four pages are devoted to showing what the evidence which had been adduced by which General Porter in his defense was.

You have heard this record. You have heard the testimony of General Morell, General Sykes, and the other witnesses, who proved what the character of the night was, what the character of the obstructions was, what the difficulty was in the way of General Porter marching, what his own acts and declarations were at the time he received that order, and what he did the next morning when he was endeavoring to be up on that march; and you can now determine how far that
1378 which I have just read was a fair statement to be set down in an opinion upon a case such as this, involving issues such as were involved here, and intended to enlighten the President's conscience and inform his mind, when you see that of four pages devoted to this subject only thirty-six lines were given to the testimony on the part of one who had been accused of such crimes and found guilty, notwithstanding that that testimony was of the character which this record shows, and which, as your memory must verify, was of the very strongest nature in support of his defense.

Now, for the purpose of seeing how the Judge-Advocate, in this revise, seems to have been carried away, how he seems to have lost sight of the testimony upon the part of General Porter, and to have magnified every expression which was dropped by a witness who seemed to be adverse to General Porter, let me call your attention to what he said on page 305 in reference to the testimony of Captain DeKay:

> There are certain other facts disclosed in the testimony which go far to indicate a settled purpose on the part of the accused to disregard this order of his commanding general. It was couched in terms as strong as a military man could employ in addressing a subordinate; and yet its urgent language was not commented upon, and does not seem to have attracted any attention, as appears from the conversation that ensued between the accused and his generals after its receipt. The accused, as we learn from Captain DeKay, handed it to one of his generals present, saying, "There is something for you to sleep on"—not something that you are to prepare to execute—not something which announces that the army with which we are connected is threatened by great perils, which we must make extraordinary efforts to meet, but "something for you to sleep on." The whole tone of that conversation was to the last degree saddening and discouraging for those who believe that in the prosecution of this war much vigor is much wisdom. (Page 305, O. R.)

It would be inferred from this that there was no doubt but that these were the precise words used by General Porter: "There is something for you to sleep on." The emphasis put upon them would convey the impression, too, that they were said in a tone and manner evincing an unquestionably bad spirit on the part of General Porter, and that his generals sympathized with him in the feeling. These words seem to me to be innocent enough; I do not perceive any such wicked purpose as is ascribed to them by the Judge-Advocate. I submit, that when relying upon them, he should have at least made some reference to the other side of the question. On the contrary, the statement is made as though it was a conceded and uncontradicted fact that those were the exact and precise words used by General Porter. Now let us turn for a moment to the testimony of General Butterfield. I have read it already, but

this part of it I will read again. General Butterfield says (page 185 of the Record):

He (Porter) handed the order to General Morell or to General Sykes, who were present, and said, *there was a chance for a short nap,* or something of that sort. I do not remember the exact words.

Again, after stating the urgent reasons pressed by General Sykes and Morell for the delay of the hour of marching, he says:

In reply to these remarks, General Porter spoke rather decidedly: that there was the order—it must be obeyed; that those who gave the order knew whether the necessities of the case would warrant the exertion that had to be made to comply with it.

I submit, that in a revise or opinion such as this was, the words of General Butterfield should have been quoted, if those of Captain DeKay were worthy of so important a notice. General Butterfield, it seems to me, was not at all more likely to be mistaken than Captain DeKay. I think that if the Judge-Advocate believed that the testimony of Captain DeKay was of so much importance as to give it the prominent
1379 position he did give it in this opinion or revise, he should at least have put the opinion of General Butterfield in the other end of the scales for whatever weight it was entitled to. The Judge-Advocate said that the language and tone employed by General Porter was "saddening and discouraging." But certainly there was nothing in the language of General Porter to which that remark could apply, for General Porter insisted that the order must be obeyed and that they must march; and he yielded only to the urgent solicitation of his officers who were in his tent. We do not contend for a moment that General Porter was not responsible for what he did. I do not suppose that any general has a right to screen himself from responsibility by throwing it upon his subordinate officers. But I do suppose that resort may be had to the opinions of those officers; the men whose duty it was to see that their troops were in an efficient condition, the men who were responsible for the discipline and efficiency of those troops. I suppose it is a proper thing for the commanding officer not only to consult them, but to give due weight to the opinions which they may express. I suppose that no general who is worthy of a command would fail to give a proper consideration to the opinions and advice of his subordinate officers standing in the relation to him which Generals Sykes and Morell did to General Porter on that night.

But there is another aspect in which the opinion of the Judge-Advocate, to which I have referred, becomes a matter of importance. We have stated that we considered the finding of this court-martial as entitled, not only to respect at your hands, but to very great weight with you in your consideration of this subject. We have no method of ascertaining the reasons which operated upon this court-martial in arriving at its conclusions, because the members of the court do not disclose the grounds upon which they act. But we must look to this opinion of the Judge-Advocate as being the only exposition of the views which the members of that court entertained; and if it appears, by looking at the opinion, that it does not rest upon sound logic, if you come to the conclusion that the reasons given by the Judge-Advocate do not sustain the findings and the sentence, then I think you will conclude that the opinion of the court-martial is not entitled to any more weight than that opinion is, and that if the one falls the other must fall with it.

I do not propose to enter into a more minute examination of the evidence, to show that the darkness of the night and the obstructions were such as to justify General Porter in changing the hour of marching from one to three.

The facts, as shown by Mr. Maltby in his argument, are so clearly established on this point as to render it unnecessary. It would be but a waste of time. My purpose was to prove to you that the finding of the court-martial was not sustained by the evidence then before the court, and I have endeavored to do so by showing that the inferences drawn by the Judge-Advocate were entirely fallacious.

For this purpose I have shown you upon what he did rely and the mistakes made by him, and I am confident you must find that his conclusions are not well drawn from the evidence, and I am further confident that on the whole evidence, when taken together, General Porter should have been acquitted of disobedience under the ninth article of war.

But the Judge-Advocate took the position that it was the duty of General Porter to have marched at one o'clock at night, no matter what were the obstructions, no matter what was the darkness. I do not propose to elaborate this point, but simply to state the propositions,
1380 as I understand them, rather than to discuss them. I suppose that an officer, when he receives an order to be executed in the presence of the commander who gives the order, is bound to execute it without considering what he has to do, except merely to execute that order. But I suppose, that where an order is given to an officer at such a distance from the commander who gave it that it is impossible for the latter to know the precise circumstances and conditions surrounding the officer receiving the order, at the time that it is received by him, that then a question may arise as to what that subordinate officer should do, and he has a right to consider whether the conditions in which he is placed are those which were contemplated by the commander who gave him the order, and if he finds that those conditions have changed, or that his superior officer did not at the time understand or know what those conditions were or would be, then he has a right to exercise his best discretion in endeavoring to comply with that order in spirit, as far as he is able to do so.

I submit that when you come to examine this order to General Porter, to march at one o'clock at night, you will find that the spirit of that order, the purpose of that order, the end of that order was to bring General Porter with his command to Bristoe Station in such a condition as to be used for the purpose of attacking the enemy and driving them from between Manassas and Gainesville, where they were then known to be. I submit further, that if General Porter, knowing that the purpose of being called to Bristoe by General Pope was, that he should be used for the purpose of attacking the enemy when he arrived at Bristoe Station, knowing that in order to do that he must have his troops fresh, knowing that if, under the circumstances shown by the evidence, he had his troops up to move at one o'clock at night, they would be so fatigued; so worn out by waiting until daylight enabled them to move, that when they did arrive at Bristoe Station they would be entirely incompetent and unable to be used for the purpose for which they were intended, that then, if General Porter had, under those circumstances, determined nevertheless to move at one o'clock, it would have been such a miserable subterfuge and pretense of obedience to the order, that he would have deserved the censure which was heaped upon him, instead of the commendation which he should have received for exercising a proper discretion and judgment in so handling his troops, in so moving and marching, that he could accomplish the only true purpose of a soldier by being most efficient at the right time, and at the right place, against the enemy upon whom he was moving.

If I am right about it, that this was the true aim and purpose of this order, and if I am right in the construction which I put upon the nature and binding force of these orders, then I think it is quite clear that General Porter, in determining to move at daylight (the only time at which, as I think you must be satisfied from the testimony, he could move with efficiency), was doing that which he ought to have done, was doing that which, under the circumstances, was the only proper thing for him to do; that there is no military rule which imposed upon him the necessity of attempting to move at one o'clock that night; and that therefore the opinion and finding of the court-martial upon this point in the case was manifestly an error.

THE JOINT ORDER TO M'DOWELL AND PORTER OF AUGUST 29, 1862

We now come to consider the next proposition, which is the charge that General Porter disobeyed the joint order of the morning of
1381 August 29, 1862, to General McDowell and himself to move towards Gainesville.

The joint order was in the following words:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29th, 1862.

You will please move forward with your joint commands towards Gainesville. I sent Gen. Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his *aid-de-camp* last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where Gen. McDowell was until a late hour this morning. Gen. McDowell will take immediate steps to communicate with Gen. Ricketts, and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run by to-night or by morning. The indications are that the whole force of the enemy are moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own headquarters will, for the present, be with Heintzelman's corps, or at this place.

JOHN POPE,
Major-General Commanding.

Generals MCDOWELL and PORTER.

No order or information whatever was received by General Porter from General Pope after this order was received until the delivery of what is known as the 4.30 order, late in the afternoon or about sunset. General Porter did not even know that General Pope was not still at Centreville. He did not know that General Pope had moved his headquarters to the immediate rear of Sigel, Reno, and Heintzelman, near the intersection of the Sudley road and Warrenton pike. We must, therefore, consider the conduct of General Porter in the light of the joint order, and the circumstances as they existed on that morning, upon the receipt of that order, and as they developed during the interval between the receipt of that order and the 4.30 order.

The order I have just read is, I think, very obscure. It may be my want of military education which makes it seem so, but it certainly has been a source of great difficulty to me in my endeavor to understand it. The circumstances surrounding it and surrounding General Porter were

of such a character that I can understand the difficulty, even to him, must have been very great indeed. But we must endeavor to analyze this order and try to find out what it does mean, and try to find out, above all, what it ought to have meant to General Porter at the time he received it.

The directions contained in it are:

1st. That they were to move with their joint commands towards Gainesville.

2d. That as Generals Heintzelman, Sigel, and Reno were moving on the Warrenton pike, in the direction of Gainesville, and were then not far from it, communication must be established with that force, and then the whole command should halt.

3d. That the troops must occupy a position from which they could fall back behind Bull Run at Centreville that night, or by morning.

4th. That if any considerable advantages were to be gained by departing from this order, it would not be carried out.

5th. That General McDowell should instruct General Ricketts to join the other divisions of his corps as soon as practicable.

1382 These are the literal directions contained in it. But it becomes necessary to look somewhat deeper, for the purpose of understanding what was intended to be conveyed to the mind of Generals McDowell and Porter by this order, and the construction they were to put upon it. This can only be done by the light of the events immediately preceding its issue and the then known military situation.

On the 27th, a portion of Heintzelman's forces, under Hooker, had an encounter with Ewell, of Jackson's command, near Bristoe. It was then known that Jackson was somewhere between the Manassas and Gainesville road and the Warrenton pike, and that Longstreet was marching in the direction of Manassas through Thoroughfare Gap, to join Jackson, and was then within a short distance of the gap. General Pope had issued a general order, dated August 27th, directing General McDowell, with Sigel, to move from Warrenton to Gainesville, and that Heintzelman and Reno should move to Greenwich, communicate with McDowell, and support him in his operations against the enemy. Porter had been also directed to push forward, as soon as relieved by Banks, in the direction of Greenwich and Gainesville.

Now this was intended, as I understand it, as a concentrating movement to press Jackson, and McDowell's movement on the Warrenton pike to Gainesville was a most important constituent in that movement.

In pursuance of that order, McDowell issued his order of 11.30 p. m., August 27, at Buckland Mills, to carry the directions of the general order into effect. (McDowell's Defense, page 39.)

This order of McDowell "directed the holding of the strong positions of Buckland Mills and Hay Market, with a support at Gainesville, so as to hold in check any force coming through either gap, while two of the divisions with Heintzelman and Reno should go against Jackson, in the direction of Manassas." This was communicated to Pope, as also "the information of the near approach of Longstreet." (McDowell's Defense, page 44.)

Next came the order to McDowell from Pope, Bristoe Station, August 27, 9 p. m., to march to Manassas. (McDowell's Defense, page 40.)

Then McDowell changed the disposition by order from Reynolds' camp, August 28, ordering Ricketts to look out for Longstreet's coming through Thoroughfare Gap.

The order which was issued from Reynolds' camp is this:

[General Orders No. 10.]

HEADQUARTERS THIRD ARMY CORPS,
Reynolds' Camp, Aug. 28th, 1862.

1st. Major-Gen. Sigel will immediately march with his whole corps on Manassas Junction, his right resting on the Manassas Railroad.

2d. Brig. Gen. Reynolds will march on the turnpike immediately in rear of Gen. Sigel, and form his division on the left of Gen. Sigel, and march upon Manassas Junction.

Brig. Gen. King will follow immediately after Gen. Reynolds, and form his division on Gen. Reynolds' left, and direct his march upon Manassas Junction.

4th. Brig. Gen. Ricketts will follow Brig. Gen. King, and march to Gainesville, and if, on arriving there, no indication shall appear of the approach of the enemy from Thoroughfare Gap, he will continue his march along the turnpike, form on the left of Gen. King, and march on Manassas Junction. He will be constantly on the lookout for an attack from the direction of Thoroughfare Gap, and, in case he is threatened, he will form his division to the left and march to resist it.

The headquarters of the corps will be at King's division.

By command of Major-Gen. McDowell.

(Signed) E. SCHRIVER,
Colonel and Chief of Staff.

1383 That was followed by what is to be found on page 43 of General McDowell's Defense. On the morning of the 28th Captain Leski sent General McDowell the following message:

10.15 A. M.

The enemy is advancing through the pass.

W. LESKI, *Captain and A. C.*

Col. Wyndham will hold them as long as he can, and asks to be re-enforced.

W. L.

Upon that General McDowell sent General Ricketts this message:

AUGUST 28TH.

Send a brigade and battery to Colonel Wyndham, and follow them up with your whole division.

ED. SCHRIVER,
Colonel and Chief of Staff.

Gen. RICKETTS.

This was shortly after ten o'clock in the morning. Under this order, Ricketts moved with his division to Thoroughfare Gap and remained until about sundown or dark of the 28th, when he retreated back to Manassas by way of Gainesville and Bristoe from Longstreet's forces.

Unquestionably he was retreating from Thoroughfare Gap in consequence of the movement which was made by Longstreet's forces coming through the Gap and coming through Hopewell Gap, as has been described.

King's division was upon the Warrenton pike, between Groveton and Gainesville, and towards evening of the 28th had a very sharp engagement with a part of Jackson's forces. This division retired from the Warrenton pike after their fight on the night of the 28th, around to Manassas.

Early in the morning of the 29th, General Gibbon, who commanded a brigade in King's division, went to General Pope, told him of what had occurred the night before, that the absence of troops on Warrenton pike had left the way open for Lee's army to join Jackson, and he supposed he would send troops there if he had them. (Gibbon, page 244, N. R.)

Porter was moving to Centreville under order dated near Bull Run, August 29th, 3 a. m.

That order was:

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, August 29th, 1862, 3 a. m.

GEN.: McDowell has intercepted the retreat of Jackson; Sigel is immediately on the right of McDowell; Kearney and Hooker march to attack the enemy's rear at early dawn. Major-Gen. Pope directs you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

I am, general, very respectfully, your obedient servant,

GEO. D. RUGGLES,
Colonel and Chief of Staff.

Major-Gen. PORTER.

That order General Porter received about six o'clock in the morning, and he moved between six and seven.

While moving under this order, General Porter met McDowell at the Weir house, near Manassas Junction. Then McDowell informed him of the position of matters, and especially of the retreat of King and Ricketts the night before—that Ricketts was then near Bristoe, on his way to Manassas. King's troops had already reached Manassas.

General McDowell also stated that Longstreet was coming
1384 through Thoroughfare Gap to join Jackson, and that the then plan of the campaign was preparation to form behind Bull Run a line of this army, and of the re-enforcements from the Army of the Potomac, and not to bring on a general engagement until this was done. (See Porter's Statement, page 32.)

Porter moved on, and when two and one-half miles beyond Manassas, in the direction of Centreville, he met Captain Piatt, who gave him a verbal order to move to Gainesville and take King with him.

The point at which General Porter received this message through Captain Piatt was about six to seven miles from Bristoe, in the direction of Centreville.

Piatt went on to McDowell to inform him that King's division was ordered to move back to Gainesville with Porter.

I suppose that this order to General Porter to take King's division and move to Gainesville was, in point of fact, sent to General McDowell, in order to inform him that King's division had been assigned to General Porter, and that it was after and in consequence of the visit paid by General Gibbon to General Pope; and that Piatt, on his way to see General McDowell, had reached Porter before Gibbon reached Porter with the written order; and that, meeting General Porter, Piatt informed him of the message which he was taking to General McDowell. This is sustained by the testimony of Captain Piatt, which has been taken by deposition, and which was read to you. I think Mr. Maltby referred to that portion of it. At any rate, it will be found in his testimony.

When General McDowell received this message through Captain Piatt, that King's division had been assigned to Porter, General McDowell sent a note to General Pope, requesting that King's division of his corps be not turned over to Porter, but that he be allowed to conduct it himself.

General Pope says (page 14 O. R.):

An hour and a half later, I received a note from General McDowell, whom I had not been able to find until that hour in the morning, requesting that King's division of his corps be not turned over to General Porter, but that he be allowed to conduct

it himself. I then sent a joint order to Generals Porter and McDowell, directed to them at Manassas Junction, &c.

Then again, on page 29, General Pope says:

A. I received a note from General McDowell, about the time, I think, that Dr. Abbott came to me from General Porter, in which General McDowell referred to the order which I had sent to General Porter, to which reference is made in the joint orders to Generals Porter and McDowell, and asked that King's division may be returned to him and not assigned to the command of General Porter. It was in consideration of General McDowell's request, and perhaps somewhat due to the request for a written order that I had received from General Porter, though I did not remember it at the time I answered, that this joint order was written, which relieved King's division from service with Porter's corps.

What I wish, at this point, to impress upon the minds of the Board is, that General McDowell, upon receiving information that King's division had been assigned to General Porter, immediately sent a note to General Pope, remonstrating against the turning of King's division over to Porter, and asking that it be returned to him, and that General Pope's compliance with that request was to be found in the joint order which we are now considering. It will be seen, I think, as we progress, that each one of these facts becomes important in considering the effect of the joint order and the position of General Porter in reference to it, as well as that of General McDowell.

General Porter, after receiving the order through Piatt, faced his command about and moved it back towards Gainesville, on the Manassas and Gainesville road.

1385 Porter then dismounted and wrote a message to Pope, which he sent by Dr. Abbott. (Abbott, page 65 O. R.)

This message on the part of Porter to General Pope, which was sent by Dr. Abbott, gave General Pope full information as to King's and Ricketts' divisions, as communicated to General Porter by General McDowell. In other words, when General Porter found that he was marching back in the direction of Gainesville, and had obtained the information from General McDowell to which I have referred, with reference to the then condition of affairs, namely, that King and Ricketts had retreated from the important points at which they had been placed the day before; that Thoroughfare Gap was left open; and that Longstreet's force, without any difficulty, could come through, he immediately communicated it to General Pope; and in doing so he did that which, I suppose, it would have been the duty of any officer who had the cause in which he was engaged at heart to do with alacrity. At the same time he informed him that he had that morning received several verbal orders from him, rather contradictory in their nature, and that though the verbal order by Piatt was contrary to the written one under which he was then moving to Centreville, he obeyed it as the proper one under existing circumstances; but asked, in order to avoid any mistake in the understanding of orders, that General Pope would in future put his orders in writing.

This message having been sent by General Porter to General Pope by Dr. Abbott, General Porter then rode back towards Manassas and again saw McDowell at the Weir house, and then McDowell requested him to place King on his right, so that he would have his command together when the forces were united, it being understood that Reynolds was to be on the left of the forces on Porter's right. (Gibbon, page 245 N. R.)

Gibbon delivered to Porter the written order referred to. (Gibbon, page 259 N. R.)

That order, which was sent to General Porter through General Gibbon, is in these words:

HÉADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29th, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton pike. Be expeditious or we shall lose much.

JOHN POPE,
Maj. Gen. Commanding.

General Porter had been informed that the plan of the day before was to intercept the retreat of Jackson and to interpose between Longstreet and Jackson before Longstreet could get up, and that this plan had been partially thwarted by the retreat of Ricketts and King on the night before. He was also informed of the fact that Longstreet was coming through Thoroughfare Gap.

Porter moved on in the direction of Gainesville with his own corps and King's division until he reached Dawkins' Branch, where he met the enemy about 11.30 a. m. coming from Gainesville.

He had captured some rebel scouts, and from them, from the knowledge he had of Longstreet's position of the night before, from the distance to Thoroughfare Gap of about nine miles, and from the dust rising above the trees, he had every reason for believing that it was Longstreet's force which confronted him.

Skirmishers were thrown out. Butterfield's brigade was ordered to move forward and seize a commanding position, so as to cover the deployment of the troops while getting into position for an engagement;

Morell's division was ordered to deploy in line of battle; Sykes'
1386 division was also being brought forward for the same purpose, and King's division was following.

These movements were in progress under the order to which I have referred, that General Porter received in the morning through Captain Piatt, and subsequently in writing through General Gibbon. These movements were in progress, all looking to a forward movement and an attack upon the enemy, when Dr. Abbott arrived with the joint order. It is to be observed that this joint order was returned to Porter by the same messenger who had taken Porter's note to Pope, informing him of Ricketts' and King's retreat, and of the situation as he had derived it from McDowell. (Abbott, page 264 O. R.)

This is a short summary of the facts in the light of which that order was read and construed by Porter.

From the terms of this order, and with the aid to be thus derived from previous events and the then known situation of affairs, it appears that its purpose was to intercept the retreat of Jackson, and to interpose the troops of McDowell and Porter (referred to) between Longstreet and Jackson, at or near Gainesville, before Longstreet could effect the junction with Jackson, and as a part of the proposed concentration, the ultimate end of which was the crushing and capture of Jackson.

Thus far it was but a duplication in purpose of the previous orders sent to General Porter; that is, I mean, of the order sent by Piatt to take King's division and move to Gainesville, and by General Gibbon to do the same thing. But there were two qualifications annexed to the joint order that did not appear in the other.

The first qualification was, that as soon as communication was established with Heintzelman, Reno, and Sigel, the whole command should halt.

The second, that the troops must occupy a position from which they could reach Bull Run that night or the next morning.

The order went further: It added Ricketts' division to the force already under Porter's command, and placed General McDowell in a position to act conjointly with Porter; and it, further than that, conferred the right to depart from the order, in case considerable advantages were to be derived from so doing.

That, I think, is about the substance of that order as near as I can get at it. As I have said, it is an exceedingly complex and obscure, and, I think, difficult order. It has not been my fortune to have had much experience in such matters, but I should think that if there is any one thing that ought to be taught in military affairs, it is that orders should be simple in their character, plain, and easily understood, especially where that which is to be done under them is to concern so largely an army and a country, and where those who are to execute them have to decide quickly and promptly as to what is to be done. It seems to me that it is a case in which of all others simplicity should be the rule. I cannot see anything simple in this order. It is complex, it is obscure, it is difficult. I can imagine that any man who was acting under it might have found himself involved in difficulties, no matter what step he took in reference to it, and that great liberality should be exercised in judging of the conduct of an officer who was to be guided by it.

The view which I have given of this order, it seems to me, is sustained by—

1st. The testimony of General McDowell, that "the plan of the previous day under which he was acting, and which was partially thwarted by the mistake of the night before, on the part of certain division commanders, was that this concentration should have been effected
1387 against Jackson, for the purpose of pressing him before the arrival of Longstreet." McDowell, page 829 (N. R.).

2d. The verbal order of Pope to Porter, sent by Piatt on the morning of the 29th, to march to Gainesville and take King with him, thus following this plan and seeking to retrieve its partial failure. Page 14 (O. R.).

3d. The written order delivered by Gibbon to Porter, to push forward to Gainesville and take King's division with him. See order, Porter's statement, page 27.

4th. The statement of Gibbon, that the object of the order was to interpose these forces between Longstreet and Jackson, and thus prevent their junction, the importance of this being the substance of what he had communicated to Pope. Gibbon, 259 (N. R.).

5th. By General Pope's evidence, that "their (King's) withdrawal to Manassas Junction I feared had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending to re-enforce him," as a reason for issuing the joint order. Page 14 (O. R.) (See, also, Pope's ev., page 34, O. R.)

6th. That portion of the joint order itself in which McDowell and Porter are directed to move upon Gainesville with their joint commands, and in which they are informed that Heintzelman, Sigel, and Reno were moving on the same point by Warrenton pike, and that no orders had been sent to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except those sent to McDowell the night before, which were to hold his position on the Warrenton pike until the troops moving down the Warrenton pike should fall on the enemy's *flank* and *rear*, and that the indications were that the whole force of the

enemy was moving at a pace that would bring them on the field by "*to-morrow night or the next day.*"

Now, if these premises are correct, this movement would seem to have been a most wise, skillful, and judicious one, and probably it was—at any rate, I suppose it was.

But just at this point I want to call attention to that which seems to me to be most extraordinary. The joint order says that the indications were that the whole force of the enemy was moving at a pace that would bring them "*here by to-morrow night or the next day.*" The Gibbon order was issued with the understanding that Longstreet was pressing through Thoroughfare Gap; and Porter's movement was in part to prevent his junction with Jackson. We know that the whole purpose of this joint order, as I have undertaken to show, at least the great purpose to be accomplished by it, as well as that of the order issued prior to it, upon which it was founded, was to prevent Longstreet from joining with Jackson, and that this joint order was issued in consequence of the information which Porter had given to General Pope that Ricketts had retreated from Thoroughfare Gap that morning; and that was one of the reasons why Ricketts was added to Porter's force, and why General Pope determined to send General Porter and King and Ricketts' division, amounting to some twenty-five thousand or twenty-seven thousand men, back again to take the place which had been vacated by General Ricketts' and General King's retreat of the night before, for the purpose of intercepting and preventing the movement of Longstreet along the Warrenton pike, and his union with Jackson.

General Pope knew, at the time he issued that joint order, that Ricketts had been driven from Thoroughfare Gap by Longstreet's forces, and that he was sending this force there for the purpose of intercepting and preventing this junction being made between Longstreet and
1388 Jackson. And yet he says that the indications were that the whole force of the enemy was moving at a pace that would bring them "*here by to-morrow night or the next day.*" In other words, the commanding general, with a knowledge that the enemy were within nine miles of the point at which his forces were confronting Jackson, and that Ricketts' division had been driven from Thoroughfare Gap on the night of the 28th, and that the line of march by Longstreet was unimpeded, makes the extraordinary statement, in the joint order, that the indications were that the whole force of the enemy was moving at a pace that would bring them on the field by the night of the next day or upon the following day.

Now, I say that General Pope knew that Longstreet's forces were in a position so that they could reach the field during the day of the 29th; and that he knew it at the time he stated in this order that they would not reach there until the next night or the following morning.

And here let me call your attention to his own testimony. He says, on page 33 of the Court-Martial Record:

> I had feared the junction of those corps at any moment, as I knew from information that Longstreet was pushing forward to join Jackson. I therefore expected that movement of Longstreet certainly during the afternoon of the 29th.

That General Pope had this knowledge, that he knew on the 27th that Longstreet's forces were at White Plains, which is within four or five miles of Thoroughfare Gap, there is abundant testimony in this record. His own reports show it. He knew that the whole force of Longstreet or of Lee—the main force, under whatever name—were within a day's march of Thoroughfare Gap upon the 27th; he knew that upon the 28th

they were at Thoroughfare Gap; and if his mind was in a condition to understand anything, he must have known on the 29th at ten o'clock, when he wrote the joint order, that Longstreet's forces early that morning were within from nine to ten miles of Groveton, at the place which is called the field of battle, because he knew that Ricketts' division had been driven from that point by those forces on the night of the 28th.

Now, I say that this is a most extraordinary phase of this whole affair; here is a commanding officer giving an important command to subordinates, sending them upon a mission of the first importance, putting under their command twenty-five to twenty-seven thousand men for the purpose of discharging a duty upon the result of which the fate of his own army, and possibly the fate of his government, may depend, with a knowledge that the main force of the enemy is within an easy half-day's march of him, and yet telling his subordinates that this force would not come upon the field until the night of the next day, or upon the following day. Is it fair to hold a subordinate officer responsible for non-performance of duty under an order so inconsistent with known facts as this was?

Porter's and McDowell's commands, from the moment that order reached them, were marching to a common point, with a common purpose, which was to be effected by them conjointly. They were doing duty together. That purpose was to reassume the positions vacated by Ricketts and King on the night before and retrieve the vantage ground which had been thus lost. By this means the plan of concentration of the day before was to be restored, and Jackson was to be pressed, and Longstreet prevented from joining him.

It should be borne in mind, also, that the forces of King and Ricketts numbered about fifteen to seventeen thousand men, and as they had been driven from their positions, it must be assumed that General Pope intended, by uniting them to Porter's corps, to make the force strong enough to effect his purpose.

1389 The joint order, taken together with the facts to which I have referred, shows that General Pope regarded this as a most important movement, and that he proposed to guard against the mischance of the night before by providing a larger force, and one quite sufficient to accomplish the objects of the movement.

Again, I do not find anything in the joint order that favors the idea, in any way, of a separation of these two commands while performing the duty assigned to them. But I do find that which shows that General Pope contemplated that they might not be able to accomplish the object of the movement; that circumstances might arise which would render it impracticable. In that event the discretion given to depart from it, if considerable advantages were to be gained by so doing, would spring into existence.

The construction which I have given to this joint order is one that may be unsatisfactory to the Board. I do not know how far it accords with the views which they entertain of it. It is the best translation which I have been able to make, and I think it requires a process of translation to arrive at what it does mean.

Having given this explanation of what seemed to me to be the joint order, I wish now to take up the revise or opinion of the Judge-Advocate, for the purpose of considering what seems to me to be the errors into which he has fallen in reference to this joint order and the position of General Porter under it.

But, before coming to that, I want to call attention to that which I think is clearly an error also on his part. That is this:

IT IS AN ERROR TO ASSERT THAT M'DOWELL TOOK COMMAND OF PORTER'S FORCE BEFORE THE JOINT ORDER WAS RECEIVED.

The Board will recollect that prior to the receipt of that joint order General Porter was moving first towards Centreville, but that, after receiving the verbal order through Captain Piatt, he faced about and went back towards Gainesville, with King's division as a part of his command.

You will recollect that in moving up towards Centreville, General Porter had an interview with General McDowell; that he afterwards received the order by Piatt, and then faced about and was moving back again towards Gainesville when he received the Gibbon order; and that he had another interview with General McDowell. You will recollect that immediately after General McDowell was informed that King's division had been assigned to General Porter, General McDowell wrote a note to General Pope, remonstrating against King's division being turned over to Porter, and asking that it be returned to him.

Now, General McDowell seems from the time General Porter first saw him, or from the time that he was informed that King's division had been assigned to Porter's command, to have been loitering and hanging on to the skirts of Porter's command until he could get an answer back from General Pope reassigning King's command to him. Knowing that was not his place, that he had no business, at a time when his services were demanded elsewhere, to be thus idling away his time, he endeavors to give a reason for having taken that position; and that reason is to be found in his testimony, on page 91 (O. R.), in which General McDowell says this (he says it in a number of other places in substance, but here he states it very distinctly):

General Porter and I started out from Manassas with the understanding that under the article of war applicable to such cases I had command of the whole force—his own and my own.

1390 The Board should bear in mind that this relates to a period of time anterior to the receipt of the joint order. Our proposition is that after the receipt of the joint order, these two commands being joined, the sixty-second article of war did apply. But prior to the receipt of that order, I submit that the sixty-second article of war had and could have no application whatever. I submit this to be the state of the case: that when General King's division was assigned to the command of General Porter by the superior officer, General Pope, that simply made King's division a part of Porter's command, and that it was incorporated with his command, just as Sykes' and Morell's divisions were incorporated before. Further than that: when that division was taken from General McDowell, he lost control and power over it, and had no more to do with it than any one of the other officers; and the sixty-second article of war had and could have no application to the position in which General McDowell and General Porter found themselves at that time. Moreover, if I am right in the views which I take in reference to the sixty-second article of war, and the position in which they were placed, it would have been a military offense in General Porter to have conceded the command to General McDowell under the circumstances. It would have been derogatory to General Porter's position as commanding officer; would have been a want of self-respect; and I do not see how anybody who knows anything about General Porter could for one moment believe that, if he wanted to turn his command over to anybody, he would have selected General McDowell for any such purpose.

Now, the Judge-Advocate fell into this error. Let me say this: I do

not think that the errors which appear to me to prevail throughout this opinion, and which appear to have been adopted by the court-martial, and which misled President Lincoln, and which have pervaded this whole country from one end to the other in reference to this case—I do not think it is at all extraordinary to find that they took such a hold; because when you take the testimony of General McDowell and General Pope (so far as Roberts and Smith are concerned, I do not think they had much influence), you will find apparent ground for every error into which the court-martial seems to have fallen, and which seems to have been adopted by the Judge-Advocate in the opinion to which I am referring.

The Judge-Advocate says (and in this respect he has followed the language of General McDowell) that previous to this they had met, and under the sixty-second article of war McDowell had assumed command. I say that is wholly an error on the part of the Judge-Advocate. In the first place, General Porter could not have surrendered his command to General McDowell under the circumstances; there is not a fact to sustain it; and on the contrary, the testimony of General Gibbon shows directly the contrary. General Gibbons says, at page 245 of the Board's Record:

A. General Porter placed the order in his hands; that is, in McDowell's hands. He read it and expressed dissatisfaction at the fact that a portion of his command was assigned to General Porter; or, rather, not that a portion of his command was assigned to General Porter, but that a portion of his command was taken from his command—King's division. There was some conversation between the two.

It is to be borne in mind that this order delivered by General Gibbon, which was a written order, was delivered to General Porter after the information had been communicated to McDowell by Piatt (the verbal order of the morning) that King's division had been given to General Porter; that is, General McDowell had information for some time previous to this of the fact that General Porter had King's division with him.

1391 He proceeds:

I recollect that one point, the fact that General McDowell *requested* General Porter, when he formed his line of battle, which it was supposed he would form in the direction of Gainesville, that he would place King's division on his right, so that he (McDowell) could have his command together, it being known at the time that Reynolds' division, a portion of McDowell's command, was out in that direction somewhere, supposably on the right of what would be Porter's line.

Q. Was there any conversation between General Porter and General McDowell upon that subject further than the request of McDowell to Porter?—A. I think not; I don't recollect any.

Q. Did you understand that at that time General McDowell assumed or asserted any right to take command of the forces which were under General Porter?—A. Not at all; on the contrary, I should have considered any such request as proof positive that he had not assumed command.

Q. That is, the request as to King's division?—A. Yes, sir.

I do not know that it is a matter of importance in one sense, and yet it is of very great importance, as it seems to me, in considering General McDowell's subsequent conduct under this joint order, and also in determining the extent to which his testimony can be relied upon. Therefore, I wanted to clear up this matter with reference to whether he did take command or not.

When we come to the time at which the joint order itself was received, then I submit that it is perfectly clear that, under the sixty-second article of war, General McDowell had the right, and it was his duty, to assume command. That article provides that if, upon marches or doing duty together, different corps join, the officer highest in rank is to command.

General McDowell came up to General Porter with the joint order in his hands. Unquestionably, matters were changed. Then, and not until then, did General McDowell assume command; and then, and not until then, was he in a position to assume command of the joint forces.

IT WAS AN ERROR TO SUPPOSE THAT PORTER'S FORCE HAD REACHED THREE MILES BEYOND BETHLEHEM CHURCH.

Upon looking at this revise by Judge-Advocate Holt, we find that he states, when he began to consider the joint order, and General Porter's conduct under it:

> Their forces continued their march, those of the accused being in the advance, until the front of his column had reached some three miles beyond Bethlehem Church, and until a small part of General McDowell's command had passed that point.

Now, this was one of the errors made by the court-martial; it was one of the errors which was made by the Judge-Advocate; it was, probably, the beginning, the substratum upon which all the other errors that prevaded this case were founded. That, and one other, were the two, in my judgment, important points in this case. I allude now to the order alleged to have been given by General McDowell, to put his "force in there."

But this one is the beginning of the serious mistakes.

Three miles beyond Bethlehem Church would take General Porter to a point about *here* (indicating a fringe of woods below Hampton Cole's).

We know perfectly well that General Porter never did get beyond Dawkins' Branch, except with his skirmish line. We know that this statement that General Porter was three miles beyond Bethlehem Church was an entire misapprehension upon the part of the court-martial. The question arises: How did they come to fall into such a mistake, or adopt such an error as that?

1392 General Pope says that if Porter had obeyed orders, it would have brought him up with the enemy at 4.30. That shows that he supposed General Porter had gotten up to a much higher point than he had done, though he did not profess in his testimony to be able to say exactly where General Porter was. You will recollect that when pressed by General Porter's counsel, in the former examination, to state where he supposed General Porter to be, they were unable to get him to designate the spot where he supposed General Porter was. He simply stated that he knew he was somewhere on the road between Manassas and Gainesville, but where he was he could not say, only he thought he ought to have been at a point which would have enabled him to have made an attack upon the flank and rear of the enemy in the afternoon. General Smith thought he could have made a flank and rear attack, and we know where General Smith thought he was, and where he stated that he was, or that he would put him. He admitted he had placed his position much farther forward than he really was (page 360, N. R.). General Roberts says that he thought he knew where he was, and he puts him up in the same neighborhood. They all evidently thought, or pretended to believe, that he had reached a point at least a mile or more in advance of Dawkins' Branch.

But the testimony of General Roberts, and General Smith, and General Pope would probably have had but little influence with reference to the position of General Porter, because no one of those knew really anything about it. None of them were there; none of them saw where he was. But General McDowell did; General McDowell had been there; he knew where General Porter was; he knew what his position was,

and the court-martial had a right to expect from General McDowell the truth.

It is not surprising, as they were situated, that they should have taken from him a statement in reference to the position of General Porter, and relied upon that statement as being the truth. They certainly had the right, General Porter had the right, the country had the right to have had General McDowell state truthfully and honestly where General Porter was, if he knew it, and he ought to have known it. Testimony of General McDowell upon this point, as it seems to me, had a very powerful effect upon the result of that trial. He says, on page 84, O. R.:

The country in front of the position where General Porter was when I joined him was open for several hundred yards, and near, as I supposed, by seeing the dust coming up above the trees, the Warrenton turnpike, which was covered from view by woods. How deep those woods were I do not know. It did not seem at that time to be a great distance to that road (the Warrenton turnpike). It had an impression at the time that these skirmishers were engaged with some of the enemy near that road.

Again, he says, on page 221:

Q. From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of General Porter's corps, near the Manassas Railroad, on the south side of it?—A. I have no positive knowledge on that point. I have not supposed that there was, but I cannot support that supposition by any positive facts.

Then he is asked another question, and then he says:

The distance from General Porter's head of column to the road at that time was not so great as to have enabled a large force of the enemy to be between them, and to be detached from the main body of the enemy.

Then, on page 94 of the Court-Martial Record he says:

General Porter's corps was on the road leading from Bethlehem Church to Gainesville, and the rear of it was at a distance from Bethlehem Church sufficient for the larger part, if not the whole, of one of my brigades to occupy that road. I should suppose his column occupied, perhaps, *three miles of the road.*

1393 Thus you see that General McDowell is the author, and, as far as I am aware, he is the only person who is the author of this allegation, that General Porter's front was stretched out over three miles from Bethlehem Church in the direction of Gainesville. Now, this error is a very serious one. If General Porter had reached three miles in advance of Bethlehem Church in marching towards Gainesville, then the allegation would undoubtedly have been true that he had retreated; because we know that General Porter's front was at Dawkins' Branch, or about two miles from Bethlehem Church, on the night of the 29th. We allege that he never got further than that. We do not pretend that he was in advance of that at any time. And, if you establish it as a fact that General Porter's line was at any time three miles in advance of Bethlehem Church, then the conclusion is irresistible and inevitable that he had retreated at least one mile to get back to Dawkins' Branch. Thus, you see, that this error of the Judge-Advocate, that General Porter reached a point three miles from Bethlehem Church, at once implies that it was found by the court that General Porter retreated, and when you come to look for the authority of the Judge-Advocate in alleging that General Porter had reached a point three miles in advance of Bethlehem Church, you will find that his authority is General McDowell alone.

Now, there is not a particle of evidence to sustain the proposition that General Porter's advance was three miles from Bethlehem Church at any time.

Their forces continued their march, those of the accused being in the advance until the front of his column had reached some three miles beyond Bethlehem Church, and

until a small part of General McDowell's command had passed that point. (Opinion of Judge-Advocate, page 307, O. R.)

I want to call your attention to the fact that the language of General McDowell in stating that the head of the column had reached those three miles is precisely the language which was adopted by the Judge-Advocate; that is, the Judge-Advocate says that a small part of General McDowell's command had passed that point, and Porter's forces had gone on three miles. General McDowell says, page 94, Court-Martial Record:

General Porter's corps was on the road leading from Bethlehem Church to Gainesville, and the rear of it was a distance from Bethlehem Church sufficient for the larger part, if not the whole, of one of my brigades to occupy that road. I should suppose his column occupied, perhaps, three miles of the road.

The identical language, almost, that is used by the Judge-Advocate in stating that Porter's column reached three miles from Bethlehem Church. So that the error into which the Judge-Advocate has fallen is founded upon what I say is a mistake made by General McDowell that General Porter's corps had reached a point over three miles in advance of Bethlehem Church on that road.

I suppose it is entirely unnecessary for me to enter into any argument to prove to you that the farthest point to which General Porter reached was Dawkins' Branch (not over two miles from Bethlehem Church), because there is now no pretense on the part of anybody—the Recorder does not pretend, and I have heard nothing during this investigation to indicate—that General Porter was supposed to have gone beyond Dawkins' Branch. If he had reached three miles from Bethlehem Church he would have been within the enemy's lines. If that is true, then, unquestionably, the court-martial fell into an error in the conclusion at which they arrived in reference to the position and location of General Porter, and the point to which his advance had reached. It
1394 was an error of the most material character in arriving at the truth with reference to the charges which were made against him.

ERROR AS TO THE CHARACTER OF THE BATTLE OF THE 29TH.

Now, I come to consider another of the errors, as it seems to me, into which the court-martial must have fallen, as shown by the opinion of the Judge-Advocate. And that is in reference to the character of the engagement or battle which was then supposed to be going on. The Judge-Advocate says, page 307, O. R.:

They discussed the joint order, and General McDowell determined, for himself, that there were "considerable advantages to be gained by departing from it," and by moving with his forces along the Sudley Springs road towards the field of a battle then being fought by the main army of General Pope, at the distance of three or four miles. His purpose was to throw himself on the enemy's center, and he wished the accused to attack his right flank.

We have never intended to convey the impression that we supposed there was not serious fighting on the 29th. General Porter's counsel have never contended that there were not one or more occasions during that day when the fighting was by as many as 3,000 or 4,000 men. But what we allege and what we think has been abundantly proven is, that the fighting which took place that day consisted, in the morning, mainly of skirmishing and artillery firing at long range; that about twelve o'clock there was a lull which continued until, say, three o'clock, and that the real infantry fighting that was done was at intervals from three

o'clock until dark. Now, the Judge-Advocate says, on page 311 of the Court-Martial Record:

The accused had, for between five and six hours, been listening to the sounds of the battle raging immediately to his right.

This, again, is founded, as it seems to me, upon the testimony of General McDowell, who says on page 85, Court-Martial Record, when speaking of what was occurring between General Porter and himself, when they met up at Dawkins' Branch:

The sound of battle, which seemed to be at its height on our right, towards Groveton, &c.

Then he goes on to speak of

The note of General Buford indicating the force that had passed through Gainesville, and, as he said, was moving towards Groveton, where the battle was going on.

Then, again, on page 86, speaking of the time at which he was at Dawkins' Branch, which, as you will recollect, was somewhere about noon, or between twelve and one o'clock:

Q. Was or not the battle raging at that time?—A. The battle was raging on our right; that is, if you regard the line of the road from Bethlehem Church to Gainesville to be substantially northwest, the battle was raging on the right and *east* of that line at Groveton.

That certainly was calculated also to produce an impression upon the mind of the court-martial, and convey to the mind of the Judge-Advocate that at the time General Porter and General McDowell were upon Dawkins' Branch discussing what they should do under the joint order, with the view to the duty which had been assigned to them, and the circumstances that existed, at that time, off to the right and the east, this battle was raging plainly within their hearing. That is the statement of General McDowell, yet you know that at that time there was a lull upon the field. In point of fact there may have been some artillery firing. But
the commander of the army himself had arrived upon the field
1395 about noon and had commanded those forces to cease any active
movement, and they remained in that position until in the neighborhood of three o'clock. Yet here is the man who, of all others, knew most about this thing; who was present with General Porter; the man who himself had once been selected as the commander of the armies of his government; the man who was the trusted and chosen adviser and officer upon whom General Pope chiefly relied during this campaign—this man who was present with General Porter, who knew the circumstances, knew the position, who knew what that joint order meant, who knew what General Porter's duty was under the circumstances, who knew more of this transaction than anybody else could possibly have known, and, therefore, was the man upon whom the court-martial relied for the purpose of obtaining a true knowledge of the facts connected with that transaction—that man states that which you know at this time, and he knew at that time, to have been wholly untrue; because I submit, even if there had been artillery firing which occurred then, that when he stated to the court-martial that the battle was raging to the right, he meant not artillery firing at long range, but he meant infantry fighting, and such a fight as was deemed to have been proven to have taken place on that day, in order to prove that General Porter, coward-like, shrank away from the performance of his duty to his comrades who were struggling in an unequal combat with their foes. And I submit that General McDowell knew, when he used that language, that the battle was raging to the right, he was planting poison in the mind of the court-martial which

was to destroy the man whom he was seeking then to bring down to the position which he felt that he himself was in danger, and too much danger, of reaching, to be able to pursue the straightforward, honest, manly course, which he ought to have done, which his duty called upon him to do, and thus to protect and save his comrade from the disgrace and ruin which was then threatening him. Unfortunately for General Porter, unfortunately for the cause of justice, unfortunately for the cause of truth, ay, more, unfortunately for the sake of General McDowell himself, I fear that his heart had never a manly beat which would enable him to meet such an issue and stand where only an honest man should stand, and tell the truth, and take the responsibility that rested and ought to rest upon himself, rather than throw it upon the shoulders of some other officer who happened to be in a position where it could be thrown upon him. He certainly did not show any such disposition in this case, and he certainly did give a false impression to the court-martial when he made that statement, and he could not but have known that it was such when he was making it.

Here, again, it is quite manifest that the Judge-Advocate in adopting this error has taken it from General McDowell, because you will recollect General Pope says that from the time he arrived upon the field of battle, which was about twelve o'clock, he ordered the troops to cease any further exertions. But General McDowell says that was the precise time at which the battle was raging at its height. Now, the Judge-Advocate could not possibly have fallen into an error of this kind, except by having taken the testimony of General McDowell as his guide in arriving at his conclusions. He says that "a vigorous attack upon the enemy by the accused at any time *between twelve o'clock, when the battle began*, and dark, when it closed," &c., thus showing you that the Judge-Advocate supposed that this fight began about twelve o'clock, whereas, you will remember, as I stated, that from twelve to three o'clock there was no fighting, thus showing that the Judge-Advocate has taken his view upon that subject, and has fallen into that error, by reason
1396 of General McDowell's statement that the battle then was raging at its height, at the very time when he knew it was not, and that there was no truth in the statement. What we say is, that there was no battle that day, in the sense implied in the charges and specifications and in the proceedings before the court-martial; that it was not of the character which was then found—not of a character such as would have led General Porter to feel that there was a necessity for his taking this course or that course by reason of the heaviness of that engagement.

I do not propose to go into minute details as to what the engagement was. You will recollect General McKeever's testimony. That is probably the clearest account of it. If my recollection serves me right, General McKeever's testimony was to the effect that there was an attack by Hooker with one brigade; an attack by Grover, just before or just after, with one brigade; Kearney made several attacks; not more than three thousand engaged at any one time; probably four attacks, all in the afternoon; attacks not continuous or simultaneous, separated at intervals of an hour. The fighting by infantry was in the afternoon to the northeast of Groveton, and about dusk along the Warrenton pike in the vicinity of Groveton. General McKeever was probably in a better situation to know and understand what went on during that day, so far as the fighting in the neighborhood of the Warrenton pike was concerned, than any one else. You will recollect his testimony that the fighting in the afternoon, while it lasted, was probably as severe and as determined as any that occurred at any other times during the war. But the forces

were not large, and it was not a general engagement, such an engagement as was expressed in the language used by General McDowell, such as was found by the court-martial, and such as was adopted by the Judge-Advocate as a proper statement of what the character of the engagement was. But you have the testimony of twenty or thirty witnesses, called as well by one side as the other, to the effect that during that day, in the vicinity of Dawkins' Branch and back to Bethlehem Church, there was no sound of a battle to be heard by the officers or soldiers who were with General Porter. There can be no dispute upon that question, because when you have men such as were examined before you stating those facts, and no contest or dispute by the other side, then you may, I think, set it down as conclusively established that during that day, until late in the afternoon, when the engagement took place with Hood's division—that until then, during that day, there was no musketry firing heard at General Porter's position, and that the artillery firing was not such as to indicate a general engagement.

IT WAS AN ERROR TO FIND THAT GENERAL M'DOWELL DIRECTED PORTER TO ATTACK, AS HE ALLEGED.

The next point to which I wish to call the attention of the Board is what seems to me to have been the error fallen into by the court-martial and by the Judge-Advocate as to the statement made by General McDowell that he gave an order to General Porter, in these words:

> You put your force in here and I will take mine up the Sudley Springs road on the left of the troops engaged at that point with the enemy. (Page 307 O. R.)

Now, in order to consider the weight to be given to that statement by General McDowell, it is proper to take into consideration the position which General McDowell and General Porter occupied at that time, the circumstances under which they were then placed, and the conduct of General McDowell at and about that time. I have endeavored to explain the character, the purpose, and the object of the joint order.

1397 In order to determine the precise position which General Porter and General McDowell relatively occupied to each other, and to that joint order, and the situation, allow me to call your attention to what I have already referred to; that is, that General McDowell had requested General Pope to turn General King's division back to him; to the fact that General McDowell had remained in the rear of the troops without command and without object, and where he ought not to have been, but with the purpose alone, as it appears to me, and I think the evidence fully warrants me in so stating, or awaiting the reply from General Pope, which would reassign General King to him. When you look at the testimony you will find that General McDowell, immediately upon receiving this joint order which accomplished the purpose, as he supposed, for which he had been waiting, rode on to the head of the column as rapidly as possible with the joint order in his pocket, and with the determination and purpose when he arrived there of doing what he did afterwards, to wit, taking King's division away from General Porter. That such was his purpose, and practically his only purpose, I think, will be made manifest by looking at the testimony of General McDowell, at pages 790 and 791 of the testimony taken before the Board. General McDowell was asked this question:

> Q. Did not you understand that one of his brigades was deployed?—A. I don't know whether it was a brigade, or division, or regiment; I was not there for that purpose. I did not look into that question; I did not go into criticism, or take into my mind what movements General Porter was ordering with his own troops. He was in com-

mand of the corps, and I did not pretend to go into the details of the corps commander's disposition of his troops. I did not pretend to direct or criticise—it did not come into my mind to do it—what General Porter was doing with his troops. *I went there for another purpose.*

Thus you see that General McDowell says himself that he was not troubling his mind with what was occurring at that time with the troops which confessedly were under his command, as the superior in rank, at the time the joint order was received. That was not concerning him. *He went there for another purpose.* On page 791 the question was asked:

Q. Did not you have any idea as to how far it was or how long it would take you?—A. I thought I could get my troops into action quicker that way than I could by bringing them up in the rear of General Porter's, because the road was blocked up with his corps. I was excessively anxious to join Reynolds.

Q. Was it not for the purpose of coming in on the left of Reynolds with both of your divisions?—A. I should have done so if left to myself.

What he intended by saying that he was not left to himself was that when he marched over on the Sudley road and was about putting his troops, as he alleges, on the left of Reynolds, he was prevented from doing it by an order from General Pope to make an attack. He there says, when the question is asked:

Q. Was it not for the purpose of coming in on the left of Reynolds with both of your divisions?—A. I should have done so if left to myself.

As I read that testimony, when he went up to the front at Dawkins' Branch and had his conference with General Porter, the purpose for which he went was to take King's division away from General Porter. You have General McDowell, when this order was given assigning King to Porter, expressing his dissatisfaction and applying to General Pope to countermand that order and return King to him; you have him waiting in the rear of General Porter until an answer comes; you have him
1398 then going to the front and having a conference with General Porter himself, and, by his testimony, avowing that his object in going was for some other purpose than to see what was being done with the troops there. His purpose was, as I submit from this testimony, to take away King from Porter and take him over to the left of Reynolds. If I am right in that, then it seems to me that in looking at the conduct of General McDowell at the time, and at the position he then occupied and the purpose he had in view, you can form some proper determination, in connection with other circumstances, as to whether General McDowell did say to General Porter, "You put your force in here"; that is, in the sense and with the meaning which General McDowell in his testimony sought to have the court-martial suppose he had intended it.

What was that meaning? If the Board will pardon me while I call attention to General McDowell's testimony, you will see that the meaning of that, as it was given by General McDowell, was very plain—that it meant, according to General McDowell's testimony, that an attack should be made by General Porter upon the enemy in his front with his whole force. When I say with his whole force, I mean that it was not to be a mere tentative effort, but that it was to be a real attack made with as large a force as General Porter could bring to bear upon the enemy in his front. Upon page 85 of the Court-Martial Record, General McDowell in his testimony says:

The question with me was how, soonest, within the limit fixed by General Pope, this force of ours could be applied against the enemy. General Porter made a remark to me which showed me that he had no question but that the enemy was in his immediate front. I said to him, "You put your force in here, and I will take mine up the Sudley Springs road, on the left of the troops engaged at that point with the enemy," or words to that effect. I left General Porter with the belief and understanding that he would put his force in at that point.

On the same page he says, in answer to this question:

Q. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front. Will you state what that observation was?—A. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect, putting his hand in the direction of the dust rising above the tops of the trees, "We cannot go in there anywhere without getting into a fight."

Q. What reply did you make to that remark?—A. I think to this effect: That is what we came here for.

The effect of that language is plainly to imply that General McDowell meant that General Porter should make the attack, and make it in as decided and strong a manner as possible. One portion of the remark implies what I think shows the animus, the spirit, which was actuating General McDowell when giving this testimony as against General Porter. It is the key to the whole of his testimony. When he says, "I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply," he intended to convey the thought that General Porter was shrinking from an engagement with the enemy from improper motives.

But to return to the evidence of General McDowell as to what he intended by this order. On page 87 of the Court-Martial Record he says:

Q. Are you to be understood as saying, that before you saw the order to General Porter of 4.30 p. m., of the 29th of August, you, under the discretion you supposed was reposed in you, by the joint order to yourself and General Porter, had directed him to attack the enemy's right flank and rear?—A. To that effect; yes, sir. I *knew* I had that discretion.

In other words, that before he saw that order of 4.30 p. m., he had already directed General Porter to make an attack upon the
1399 enemy's right flank and rear, to the same effect as was conveyed in the 4.30 p. m. order. Again, on page 92 of the Court-Martial Record:

Q. The orders you had given to General Porter were not in opposition, or at least not of a different character from the one that came to him from General Pope?

(That is the 4.30 order.)

A. They concurred. The arrangements that I supposed to exist when I left General Porter concurred with the order which I afterwards saw from General Pope to General Porter. They were to the same effect, except as to details, which General Pope may have given. I gave no details.

Q. Would or would not the presence of General Pope, an officer superior in command to both yourself and General Porter, render inoperative or inapplicable the article of war to which you have referred?—A. It would depend upon his presence, whether it was immediate or not.

Q. We speak of such presence as existed then.—A. We did not so consider it. General Pope, according to the note we received, was at Centreville, which, I suppose, was some six miles off, and we were going away from him. I will mention further that the day before, nearly a similar case happened, when General Sigel and myself were together at Buckland Mills, and I commanded General Sigel. That was done by a direct order from General Pope before given. Still it would have been the same if he had not given that order.

Q. Could the accused have engaged in the battle according to your order, and according to the subsequent order of General Pope, and still have fallen back to Bull Run within the time named in the joint order to yourself and the accused?—A. Yes, sir.

Mr. Choate suggests that, in this connection, I shall read the 4.30 p. m. order, which I will do:

HEADQUARTERS IN THE FIELD,
August 29th, 1862, 4.30 *P. M.*

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the

woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commanding.

Major-Gen. PORTER.

Thus you will see that the testimony of General McDowell, which I have been reading, conveyed to the mind of the court-martial, conveyed to the mind of the Judge-Advocate, conveyed to the mind of the President, when he came to read over this opinion and revise of the Judge-Advocate-General, conveyed to the mind of the people of the United States who took an interest in these proceedings and knew what they were, that at noon, on Dawkins' Branch, when General Porter and General McDowell were at the head of the column, looking across towards the enemy on the hills beyond the stream, General McDowell gave to General Porter an order to make an attack, of the same effect as this order of 4.30 p. m.

I wish to go on to refer to all that portion of General McDowell's testimony where he has iterated and reiterated this statement, so that you will see how very strong General McDowell was, before the court-martial, in the enforcement and re-enforcement of this statement, that he had given this order to General Porter and what he meant by giving that order; because afterwards I think we shall be able to show that General McDowell's conduct and his own declarations do not sustain what he then said. On page 93 of the Court-Martial Record (recollect that this is a sequel to that which I have just read), in which he said that the order which he gave to General Porter concurred with the 4.30
1400 p. m. order which General Pope had given General Porter. In answer to this question:

Please state the ground on which you formed the opinion that if the accused had attacked the right wing of the rebels, as he was ordered, the battle would have been decisive in our favor.—A. Because, on the evening of that day, I thought the result was decidedly in our favor, as it was. But, admitting that it was merely equally balanced, I think, and thought, that if the corps of General Porter, reputed one of the best, if not the best in the service, consisting of between twenty and thirty regiments, and some eight batteries, had been added to the efforts made by the others, the result would have been in our favor very decidedly.

Then, again, on the same page:

Q. When the accused said to you that he could not go in anywhere there without getting into a fight, did he, or not, appear to be averse to engaging the enemy?—A. I cannot say that it made that impression on me, though, in giving my answer, I took the view that he did so imply, and made the remark——

Then on page 95 of the Court-Martial Record:

Q. When you left General Porter for the purpose of taking the Sudley Springs road, did you or not expect that he would attack the enemy as soon as he could reach them, and did you, or not, consider it his duty to do it?—A. I have already said as much, I think; at least I meant to say it.

Q. Had the accused made a vigorous attack with his force on the right flank of the enemy at any time before the battle closed, would, or would not, in your opinion, the decisive result in favor of the Union Army, of which you have spoken, followed?—A. I think it would.

Again:

Q. * * * Do you mean to say now that the fortunes of the day would have been changed, if he had made an attack without his batteries?—A. I believe it would.

Again, on page 97 of the Court-Martial Record:

A. To have defeated General Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and, I think, would have still resulted in a success to our side, to our army generally.

These extracts which I have read from the testimony of General McDowell, show that he intended to convey to the minds of the court-martial, or intended that the inference should be drawn from his testimony, that General Porter had received from him this order to make the attack to the same extent and to the same effect as the order which was given by General Pope at 4.30, and to imply that it had been General Porter's duty, under the order which he gave him, to make that attack, and that it would have been his duty, even without his order, to have done it; that General Porter, by failing to make the attack as thus ordered, had been guilty of a violation of duty, for which he was grossly culpable. It was upon that testimony, probably, the court proceeded in finding General Porter guilty, with more confidence than almost any other, because there was an order given by a commanding officer, on the spot, as he said, to make the attack. And I suppose they must have thought that General McDowell being present and knowing the circumstances, was best able to judge, and that General Porter ought to have obeyed that order.

I think, if you will look at the proceedings of the court-martial and the testimony, and the opinion given by the Judge Advocate, you must come to the conclusion that this allegation of such an order was probably the most fatal blow which General Porter received in this case.

Now the question comes, Was it true that General McDowell gave any such order to General Porter? Bear in mind that General McDowell and General Porter were there under the joint order to which
1401 I have referred, the purpose of which was, as I suppose the most important movement made during that campaign—the purpose being to prevent the junction of Longstreet and Jackson—to press Jackson from the rear while the troops were pressing him upon the Warrenton pike in front, and thus, if possible, crush him. Bear in mind that this was being done in pursuance of the views which General McDowell himself had enforced upon General Pope; that this was being done in pursuance of the plan which General McDowell fully understood and approved, if he was not the originator of it. Bear in mind that General McDowell knew all that; and he knew, in addition, that General Pope had sent toward Gainesville this force of twenty-five thousand to twenty-seven thousand men, being some ten thousand more than had been on that line the day before, for the purpose of accomplishing what was then believed to be vital to success in the campaign. Under these circumstances, was it not natural that General McDowell should have endeavored to carry that order out? Was it not his duty to have attempted to carry it out? Was it not his duty to see that the force or pressure of twenty-five thousand to twenty-seven thousand men, which he then had under him, consisting of Ricketts' and King's divisions and General Porter's corps, should be brought to bear at the point and for the purpose which, of all others, were the most important of that campaign? Was it not his duty, at that time, to endeavor to follow the directions given by that order, so far as it was possible for him to have accomplished it? He was then the superior in command; he it was who had control of Porter's force as well as his own.

Knowing the importance of that order; knowing the fact that he had these troops under him, what does he do? Instead of trying to carry that order out, either in the spirit or letter, no sooner has he received the joint order than he hurries up to General Porter as fast as he can go, and at once indicates what his purpose is. He first seeks to put King on the right. When that cannot be done, he determines to take him off along the Sudley Springs road to the Warrenton pike, thus breaking up the force which General Pope had united under these two com-

manders, for the purpose of carrying out the object of the joint order, thus rendering it impossible to carry out the order any further; thus abandoning and throwing it overboard. And for what purpose? Why, in order that he might accomplish that which he had had in his mind from the time he heard King had been assigned to Porter, which was to take King away from Porter and get him back under his own command.

Let me ask, if he believed that it was General Porter's duty to make the attack, if he believed it was his duty to tell General Porter to make the attack, would he not have made it himself, when he had those troops there, as being doubly sure of success? What was there in the nature of the circumstances, or about the position of his force, or that of the enemy, which should have made him hesitate for a moment to make the attack when he had this large force under him, instead of allowing it to be made by a little more than one-third of that force? If it could have been made by General Porter, with any expectation of a successful result, would not the addition of the fifteen thousand to seventeen thousand men, who were with King's and Ricketts' divisions, have insured that result? Would not the attack, if it had been as valuable as General McDowell undertook to convey to the court-martial the impression that it would have been, would it not have been doubly assured if this force of fifteen thousand to seventeen thousand men had been added? Is it then reasonable to suppose that if General
1402 McDowell believed that the attack should have been made—is it reasonable, I say, to suppose that he would have acted in the way he did? If he wanted to seek the field of battle, as he says, is it probable he would have gone back a distance from the point at which he and General Porter were then in consultation—back to Bethlehem Church, two miles, and five miles to the Warrenton pike, and one and one-half miles towards Groveton—a distance of six or eight miles, for the purpose of seeking the battle-field, when the battle-field, according to his own notion, was then right in his front?

Perhaps you may not always be able to determine what a man has said by what he does; but I do not know any better method of ascertaining how far you can rely upon a statement which may be made than to test what the man says by what he does. I say, if you will apply that test here—what was done by General McDowell to what he says he said to General Porter at that time—that any rational man must believe that General McDowell simply stultifies himself when he asks anybody to believe that he did say to General Porter to make that attack, and then went off some six or eight miles, taking with him fifteen to seventeen thousand men whose presence and co-operation he must have known were essential to the success of the movement. It is not consistent with reason. Men do not act without some motive. It is true that General McDowell says he did not take anything into his mind that day; it is true he says he did not take into his mind what General Porter was doing or the condition of his troops, and that he did not take into his mind what were the eventualities of that order; and, if I recollect aright, in answer to a question put by the President of the Board, he said, "I was not looking to the close of the day; I was going on the plan that 'sufficient unto the day is the evil thereof.'" (Page 829, N. R.) Nevertheless, I suppose General McDowell's mind, inert as it appears to have been, acted with some little degree of reason. And, if it did, then his conduct in turning off and going along the Sudley road, taking these troops away, is entirely inconsistent with his pretense that he gave an order to General Porter to make the attack in force

when he was at Dawkins' Branch. A man who has related facts somewhat from imagination does not always remember what he says.

We have here, in 1870, a paper published by General McDowell, in which he says this. I will only quote as much as applies to this particular subject:

> General McClellan seems to have been ignorant of the fact that up to the time of McDowell's separation of his command from Porter the opposing forces had not come within range of each other. The separation—that is, the separation between McDowell and Porter—took place before conflict was possible. There can be no question, therefore, of responsibility on either general for not making an attack before noon. Early in the forenoon, when McClellan says was "the only opportunity of attacking with good chances of success," *the approaching forces were miles apart.*

You have, in other words, General McDowell's statement at one time that he said to General Porter, in effect, there was the enemy, and to go in there and make that attack, and do it at once; there is no difficulty in your moving upon them immediately. We have him again, in a paper which certainly ought to have been well considered, stating that at the very time, as he now says, he had ordered the attack to be made, the forces were miles apart, and a conflict was impossible. By what sort of rule can such inconsistencies be reconciled? Was he stating the facts when he published the paper in 1870? If so, did he tell Porter, in 1862, to attack an enemy that was miles distant, when a conflict was impossible?

General McDowell says, on pages 217 and 218 (Court-Martial
1403 Record), that he and General Porter agreed at that time they could not go further towards Gainesville; they agreed that General Porter must not attempt it, or that they could not do so. Why was this? You will recollect that General McDowell said to General Patrick—(that is to be found on page 189 of the new evidence)—the language, if I recollect it aright, was about this: "Porter has got about as far as he can go," or "as far as he ought to go."

You have General McDowell declaring, himself, before the court-martial, that Porter could not go further towards Gainesville. You have him declaring to General Patrick that Porter had gone as far as he could go. If that were true, it was because the enemy was in front of Porter in such large force as to put it out of the question to attempt the advance—that is the only reason. If General McDowell knew that the enemy was in front of Porter at that time, then can it be possible, if he believed an attack should have been made upon that force of the enemy, he would have turned his back upon the fight?

But, having taken his 17,000 men and gone away from Porter, should he not have justified himself by the fact that he believed the joint order inculcated non-attack, under the circumstances of finding the main force of the enemy already in his front one day in advance of what General Pope had pronounced? Was not that the real, the true ground of his separation, and that he did not intend to attack himself or for Porter to attack? Can any other ground be conceived of that offers any excuse for his conduct and is at the same time consistent with integrity of purpose? But subsequently he found he had committed an error—he feared being censured for separating from Porter, and not moving on the enemy—disaster ensued, and an incensed public looked for a cause, and the responsible officials for a victim. He had not the manhood to take the temporary burden, and shifted it to the shoulders of his comrade in arms.

He imputed to General Porter a disposition to shrink from the fight; he used language in reference to him which induced the Judge-Advocate to say that which was bitter and galling to General Porter in the

extreme. It is made the ground-work on the part of the Judge-Advocate-General of imputing to General Porter, practically, cowardice or treachery.

Now, I do not believe that the trait of courage is one which deserves to be very much extolled in a soldier, but the want of it certainly deserves condemnation.

As far as my observation has gone of this army under General Pope, I think it can be said that the want of courage was not common to either officers or soldiers in that army, and while we find the fighting seemed to have been done rather promiscuously, yet, wherever the soldiers came in contact with the enemy they behaved with a degree of stubborn courage which is not excelled by soldiers or troops anywhere.

I have never seen anything connected with this army to lead me to believe that the imputation of a want of courage was just to either officers or soldiers. I would not be disposed to impute to General McDowell any want of courage, or any indisposition on his part to go into the fight. I do not think it existed. I am sincere in stating my belief that it did not exist, and that his moving back at that time was not because he had any indisposition to go into the fight, further than what arose from motives that were proper and controlling with him. But that his indisposition to go was because he believed that Longstreet's force had made its appearance in front in such numbers as to render it unwise and injudicious, with the views which he knew General Pope enter-
1404 tained with reference to the mode of conducting the campaign, that Porter and he should make an attack upon Longstreet at that time, in such a way as to bring on a general action.

Believing this, I submit that General McDowell's conduct in withdrawing from the field, and going back toward Sudley Spring—along the Sudley Springs road toward the Warrenton pike—contradicts General McDowell's statement that he directed General Porter to put his force "in there" with a view to making an attack; for the one is utterly inconsistent with the other. And as we know that General McDowell did march along the Sudley Springs road to the Warrenton pike, we therefore must infer necessarily and positively that he could not have said to General Porter "you put your force in there" with a view to making an attack. It is probable when he deposed to those words before the court-martial he was betrayed into it by a trick of his memory similar to that which led him to impute to Porter's remark, "We cannot go in there anywhere without getting into a fight," the meaning that he was averse to engaging the enemy. If he could pervert in the one case, it is not difficult to conceive that he could do so in the other. He probably did recollect having said, or having expressed by a wave of his hand, that Porter should put his forces into the woods there, meaning the woods on the east side of Dawkins' Branch and south of the railroad, and that Porter should remain there to hold the enemy in check while he went off up the Sudley road. His memory probably gave at this point one of those sudden twists—just such as it did before; and he "took the view" that it implied that Porter should move against the enemy, and then it grew into an order to attack in force, and by and by it became stronger and stronger, until it concurred with and was to the same effect as the 4.30 order, and directed Porter to attack the enemy in flank and rear; and thus on each occasion when he testified about it the proportions became greater and greater, until finally it meant what Porter's imperative duty required of him without orders; what General Pope peremptorily ordered by the 4.30 dispatch, and what, if it had been fulfilled, would have achieved a "decisive result in favor of the

Union Army." The times and the occasion were propitious for the cultivation of such a memory.

Here, again, let me call the attention of the Board to the influence which this testimony of General McDowell must have had with the court-martial, by showing you the influence that it had with the Judge-Advocate. He gave a prominence to that alleged order, and put it forward as the thing of all others which chiefly condemned General Porter. Now, let me ask this question: If it were true, would not General McDowell have stated it to General Pope previously? and if General McDowell had stated it, is it not probable that the very order itself would have been embodied in the charges and specifications?

These charges and specifications, when you look at them, are evidently prepared by somebody who intended to throw a drag-net around General Porter and cover all his actions during August 29. How can it be possible that General McDowell had ever said that to anybody? If he had said it, it would have been his duty to report it, and it would have appeared in the charges and specifications. But it is not there.

So impressed was the Judge-Advocate with the importance of this point, that, when he came to consider it, he noticed nothing which apparently could have any effect to show that there was a possibility, much less a probability, of General McDowell having been mistaken as to this order.

When you take up pages 16 and 17 of General Pope's testi-
1405 mony, it would seem that all his questions are addressed as though there was no doubt about General Porter having violated the joint order, and having acted contrary to his duty in every possible respect.

I wish to read this testimony of General Pope from pages 15, 16, and 17. I do not mean to say that this has anything specifically to do with the order of General McDowell, "Put your force in there." It goes to the effect of the relations which it was supposed McDowell and Porter had in relation to the joint order. It also illustrates, I think, the errors and mistakes that were made about this matter, of which I am now speaking, quite as well as it does some other points of the case.

Page 15 (O. R.):

Q. Was there any engagement then pending?—A. Fighting was then going on along the turnpike that led from Centreville to Warrenton—fighting was going on quite sharply.

Q. Did the march of General Porter's command, as indicated in that order, lead him towards that battle?—A. Yes, sir. It led him towards the flank of the enemy.

As I understand it, the battle indicated by General Pope was upon the east of Groveton, and on the Warrenton pike, between Groveton and the Sudley Springs road. The line of General Porter's march would have taken him not, certainly, in the direction of that battle. I do not mean to say that he could not go around and reach it. But the statement that Porter's march led towards that battle certainly conveyed an incorrect impression. I think you will find, as I read it, that that is something which may have had very materially to do with the finding of the court-martial. Both question and answer were directed so as to show that Porter should naturally have come on to the field of battle if he had continued his march, and the purpose is developed further on when General Pope proves that McDowell passed Porter, in order to reach that field. The question is then asked:

Q. What was the distance between Manassas Junction and the scene of the engagement of which you speak?—A. Between five and six miles, I think; though I had not, myself, been over the road.

Now, it is a little difficult to determine what that means, because General Pope has already described the scene of this engagement as being on the Warrenton pike, east of Groveton. Then he is asked what the distance is between Manassas Junction and the scene of this engagement. He is, undoubtedly, speaking of the line upon which General Porter was ordered to march; and if he means, by taking the line upon which General Porter was marching, that it was five or six miles from Manassas to that field of battle, it certainly is clearly a mistake, and only shows how wildly General Pope was talking. General Porter's line of march was towards Gainesville, and not to the Warrenton pike, east of Groveton. But this, again, is but the precursor of the subsequent statement that Porter failed to do what was done by McDowell, viz, come on to the field of battle with his troops, and that McDowell passed Porter in so doing.

Q. Do you know the character of the road? Had you passed over it?—A. I had not passed over it.

Q. Did General Porter obey the order addressed to him and General McDowell?—A. I do not know whether he obeyed it. He did not obey it fully. How far he obeyed it, I am not able to say; he certainly did not obey the order fully.

Q. If he had obeyed it, would it not have brought him up with the enemy before half past four in the evening?—A. Yes, sir.

Now, the word "obey" has, as I suppose, a technical meaning. I suppose it is the opposite of "disobey," of course; and the word
1406 "disobey" or "disobedience" in a military sense means, that the person who is guilty of disobedience must have failed to comply with an order from some improper motive. Thus it must be willful. A man may fail to comply with or fail to fulfill an order, and be perfectly right in so doing, be perfectly justifiable in so doing; but "disobeying" an order means something of a very different character. That is, it is a failure to fulfill or comply with an order from, as I said, some improper or willful reason.

Now, you will observe that the question is whether he obeyed or not, and the answer is that he did not obey, because, if he had, it would have brought him up before half past four in the evening.

The question and answer import not merely non-compliance with the order, but a willful non-compliance. It is manifest that this was not a proper question or answer. He should have been asked as to the facts. The inference should have been for the court. One of the accusations was that Porter had disobeyed the order. That was a question of military law. General Pope was a witness. By what right or rule could he be either asked or permitted to express an opinion upon the crime charged? It is but another illustration of the disadvantage under which General Porter was being tried, owing to the prejudice of which I have spoken.

Q. On your arriving on the battle-field where was he reported to you to be?

A. I arrived on the battle-field at twelve o'clock, about noon. At four and a half o'clock nobody on the field knew where General Porter was at all.

Q. Did, or did not, General Porter obey the second order to which you refer, issued at 4.30 p. m. on the 29th of August, directing him to engage the enemy in flank, and, if possible, in rear?

A. He did not, so far as my knowledge of the fact goes.

Q. You have no knowledge of his having made any attack then?

A. I should have known it if he had attacked.

Q. Will you state to the court, and describe the condition of the battle-field at that hour, and the importance of his obedience of that order to the success of your troops?

A. Late in the afternoon of the 29th, perhaps toward half past five or six o'clock, about the time that I hoped that General Porter would be in his position, and be assaulting the enemy on the flank, and when General McDowell had himself arrived with his corps on the field of battle—

Bear in mind that this is described, again, as the field of battel apparently to which General Porter's march would have carried him—

I directed an attack to be made on the left of the enemy's line, which was handsomely done by Heintzelman's corps and Reno's corps. The enemy was driven back in all directions, and left a large part of the ground with his dead and wounded upon it in our possession. Had General Porter fallen upon the flank of the enemy, as it was hoped, at any time up to eight o'clock that night, it is my firm conviction that we should have destroyed the army of Jackson.

Q. You have stated that General McDowell obeyed that order, so far as to appear on the battle-field with his command?

A. Yes, sir.

Now, let me ask the Board to consider for a moment how had General McDowell obeyed that joint order? What single act had General McDowell done in fulfilment of or compliance with the joint order except to take command of the force long enough to destroy the effect of the spirit and purpose of that order by taking King's and Ricketts' divisions away? That was the only step, as I submit, which General McDowell ever took in pursuance of that order, and I think that you may say that his taking them to the Sudley Springs road was certainly not the fulfillment of the order in any possible sense.

He arrived on the battle-field, I think about five o'clock, and immediately pushed forward his corps to the front; the division of General King having a very
1407 sharp engagement with the enemy along the Warrenton turnpike, in advance of the position we had occupied during the day.

Q. To reach the battle-field had, or had not, General McDowell as great a distance to march as General Porter?—A. Yes, sir. I should think fully as great.

What does he mean by that? Does he mean that General McDowell and General Porter should have marched over the same road? Does he mean that General Porter should also have turned back to the Sudley road, and gone that way up to the Warrenton pike? Or does he mean that General Porter had as great a distance to march by going around? It is simply impossible, as I say, to understand; and I suppose that General Pope was talking about this thing without knowing anything about the roads. I do not suppose that he knew where General Porter's line of march would have carried him. I suppose that he did not know what was the route General Porter would have had to take, and I cannot conceive that he could have given this testimony if he had been over the roads and knew anything about the map.

But this had its injurious effect before the court-martial. They supposed he did know. He gave his testimony as a man who ought to have known.

I have no doubt at all that it had its effect upon their minds; it certainly did upon that of the Judge-Advocate.

Mr. Maltby reminds me that General Pope said he never had been over these roads at all. I suppose that is the only way of accounting for such remarkable testimony as this is:

Q. I believe you have stated the distance from Manassas Junction to the battle-field as about four or five miles?—A. Five or six miles; I am not quite sure; that is my impression.

Q. Is or is not that about the distance which the command of General Porter would have had to have marched to have obeyed your order?—A. It would have had to march less than that. You refer, I suppose, to the order I issued about half past four in the afternoon?

Q. Yes, sir.—A. General Porter was reported to me, by the *aide-de-camp* who delivered him that order, to be two miles or more from Manassas Junction, in the direction of the field of battle.

Q. In point of fact, did or did not General McDowell, in obeying that order, pass General Porter and his command on the way?—A. I so understand.

Where did McDowell pass them? Starting out, as the Board will recollect when I commenced reading these extracts from General Pope,

with the recollection that he described the battle-field as being on the Warrenton pike east of Groveton, and that all the way through this testimony which I have read General Pope has been giving the idea to the court-martial that General McDowell was marching to this battle-field with hot haste, eager to perform his duty; that General Porter was lagging behind indifferent, yes, worse, that he was not willing to go into action at all, he caps the climax by stating that General McDowell would have had to pass the troops of General Porter in marching to that battle-field.

Does not that plainly convey the impression that General McDowell would have had to march over the same road that General Porter was upon, and upon which General Porter would have had to march? Does it not convey the impression that in some way or other, while General Porter was lying at Dawkins' Branch, General McDowell must have passed him? Now, we know the fact that General McDowell's troops were back here (between Bethlehem Church and Manassas Junction,
and a small portion west of Bethlehem Church). Instead of
1408 passing they were simply separated by turning to the right and going off to the north. General McDowell, with King and Ricketts' divisions, was in the rear of General Porter's corps. He moved off to the north along the Sudley road, nearly at right angles with Porter's line of march, which was to the westward, in the direction of Gainesville. There was no passing about it. The language which I have read to you conveys plainly the impression that while General Porter was lying along here, lagging behind, General McDowell in some way passed him to the field of battle. This testimony was taken on the first day's proceeding of the court-martial. It was General Pope's testimony, and it seems to have had—that page and a half which I have been reading—seems to have had the effect of possessing the minds of the court-martial and the Judge-Advocate with the idea that General Porter was so affected by his hostility to General Pope that he was determined that day to do nothing to assist him, and would leave his army to its fate; and they seem to have been ready to accept any statement which General Pope or General McDowell made as a verity, no matter how monstrous and mistaken it was. There is one way of accounting for it, and that is by supposing that the map which they had before them was of a very imperfect character, as we know it was, or by supposing that they had but little reference to the map; for, as far as I can see from the trial, they seem to have known very little of the real topography of the country and the real position at that time of the troops.

But to return to the alleged order of McDowell to attack. There is some other testimony which I think has a material bearing upon this. You will recollect that on the former trial Colonel Locke, who was General Porter's assistant adjutant-general and chief of staff, stated that when General McDowell come up to General Porter at Dawkins' Branch, he said to him substantially this: "Porter, this is no place to fight a battle; you are too far out." The same thing was testified to by Captain Martin, chief of artillery of Morell's division. Locke and Martin both state that when General McDowell came up to General Porter at Dawkins' Branch, General McDowell said to General Porter, "Porter, this is no place to fight a battle," or "you are too far out," or "your troops are too far out."

Now, if my memory serves me right, this testimony on the part of Locke and Martin receives no attention at the hands of the Judge-Advocate at all in his review; yet, I think, unquestionably it ought to have been stated, because it certainly seems to be inconsistent with the idea

that General McDowell could have given such an order to General Porter to make an attack if he had also stated to him, "Porter, you are too far out; this is no place to fight a battle." Well, as a matter of course, General McDowell might have changed his mind. Certainly the remark attributed to him by Locke and Martin, "Porter, you are too far out; this is no place to fight a battle," is very much more consistent with General McDowell's conduct than what he says he said—"Porter, put your force in there"; meaning he should attack in force.

General McDowell does not deny, and never has denied, that he said to General Porter, "You are too far out; this is no place for a battle." He did not deny it before, and he does not deny it now; he simply says he does not recollect whether he said it or not. We have proven by Lieutenant Davis and by Major Earle that they too were present and heard General McDowell say to General Porter, "Porter, you are too far out; this is no place to fight a battle." But that which seems to me to be most conclusive is the testimony of General Patrick.

1409 General Patrick, I suppose, is a man whose testimony is very reliable; I should think, from what I saw of him as a witness, he was about as reliable a witness as could be found. He does not appear to be a man of much excitability; he is certainly a man of deliberation, and I should think his memory could be relied upon.

Q. Give your best recollection of what occurred between you and General McDowell.—A. He directed me to halt. He said, "I am sorry," or to that effect, "that you are so quick of foot. It turns out this time to your disadvantage. I have got to countermarch you. I want to take you over by another and a better route to the scene of yesterday's operations." There and then, and while we were moving, he told me that Sigel was in a bad way, and he said, "I am going to take you away from Porter." I cannot now say whether it was at that time or subsequently, for I didn't pay special attention to it; it was something, however, like this: "Porter has gone as far as he can go," or "Porter is as far as he can go." Something to that effect. I cannot now recollect the words. That was the general substance, "I want to put you in so and so," he said to some of his personal staff—some of his youngsters. (Page 189 N. R.)

That testimony is exactly in accordance with what I suppose to have been General McDowell's real conduct on that day. I suppose that General McDowell recollected the fact that General Pope knew on the morning of the 29th that Longstreet's forces were coming to the battle-field; that he knew General Pope clearly understood that Ricketts had retreated from Thoroughfare Gap on the night before on account of Longstreet's forces. I suppose he knew that it was not General Pope's purpose to fight a general battle at that point. Therefore he felt that this force in his front being so formidable, if he made an attack with any expectation of success he must make it with a very heavy force, and that it would be necessary to make it in such a way as practically to have brought on a general engagement, and the question which presented itself to General Porter and General McDowell was, shall we make an attack, knowing as we do that Longstreet's force is in our front, in such a way as to bring on a general engagement? Can we do so consistently with the directions which have been given us to keep ourselves in a position to fall back behind Bull Run to-night? After discussing this question, it having been determined previously by them, as General McDowell himself says, that they could not move any farther toward Gainesville, Generals McDowell and Porter came to the conclusion that practically the conditions had so changed that the binding force of the joint order had ceased, and that they were then to do what, in their judgment, seemed to be the wisest and most judicious, with a view to promote the best interests of the cause which they were serving. I think that is the true construction to put upon the conduct of General

McDowell at that time, and when he determined to take King away it was with that view, and under those circumstances, and when he said to General Patrick that Porter had gotten as far as he could go, he meant that he had gotten as far as he could go for the reason that the enemy which confronted him was in point of force such as they ought not to attack, and that he intended leaving Porter there for the purpose of keeping that force in check while he went around to the Warrenton pike for the purpose of putting his men on the left of Reynolds. Indeed, as it appears to me, it is the only construction that can be consistent with an honest intent on the part of General McDowell in the course pursued by him. But this is not all.

General McDowell was examined before you as to this order which he says he gave. You will recollect that after a good deal of
1410 that sort of work which my friend Mr. Choate had with General McDowell on this subject, he asked him this question:

Q. What kind of an engagement did you expect him (General Porter) to enter into while no other but artillery fighting was going on along the rest of the line?

(I have not referred to that portion of General McDowell's testimony in which he admitted, when he was examined at Governor's Island, that that "raging" fight that he had made so much of in his original testimony was only artillery firing.)

A. As I have tried to make myself understood on several occasions, the nature of the particular kind of contest which he was to engage in was not a matter which I ventured to impose upon him. As a distinguished and zealous officer, with his corps under his command, I did not venture to do anything more than indicate the place where I thought he was to apply that force. Whether he was to skirmish or have a very deep line, or extended one, was a question which I did not go into at all, nor think of going into.

Q. Then a skirmish line would have answered your expectations when you left General Porter, if, in his discretion, that was more advisable?—A. It would depend upon the nature of the skirmish, how it was done, how vigorously carried out, whether the circumstances required it, and it only. It depends upon a great many things that you must make a great many suppositions about before I can give an intelligent answer. If you want to know a general principle, I believe it is laid down by military writers that a body of men should be in a condition to offer battle or decline it, whether the main body shall be advanced or retire on the reserve, and many other positions, all of which are conditions upon which battles are determined.

Q. And determined upon the discretion of the corps commander?—A. Yes; provided he acted energetically.

Q. Provided he acted according to the best of his discretion as a soldier?—A. Yes, sir.

That is only a restatement of what he had said previously. In other words, after having given the court-martial to understand, after having convinced the court-martial, so entirely satisfied them that they were willing to found a judgment upon it, that he had given General Porter an order to attack, to the same effect as the order given by General Pope at 4.30 p. m.; that he had given him an order to attack, the effect of which attack would have been to secure a victory to the army under General Pope; that he had given him an order to attack, the effect of which would have been to crush Jackson and probably capture his army; this is what General McDowell gave that court-martial to understand as what he meant when he said that he told General Porter, "Put your force in there"; yet, when he is cross-examined before you, he says that a skirmish line would have satisfied his expectations under that order, if General Porter had deemed that wise and discreet. Think of it for a moment. Here is an intelligent man, an intelligent and accomplished officer; an officer who has had the best military education this country affords; an officer who has been educated under auspices which I have always been led to believe were, in point of honorable tone, the very highest

that could be obtained; an officer who had had the largest experience at that time, probably, or as large as that of almost any other man in the Army; a man who had filled the very highest position in the Army when the war first broke out; you have that man, the trusted chieftain under General Pope, the man upon whom he had relied in that campaign more than any other, and who probably understood more about that campaign than any other man did, you have him impressing upon the court-martial and reiterating the statement in all the various forms that could produce an impression upon their minds, that he had given this order imperatively to General Porter to make this attack—plainly, distinctly, and pointedly—and that the effect of that attack would have been to secure a triumph for the Federal arms and crush the
1411 rebels whom they were seeking to destroy. You have him now, after the effect had been produced by that testimony; after the sentence of the court-martial had been founded upon this declaration that he had given this order to General Porter; after that sentence had been pronounced and confirmed, and after the petitioner has been enduring this sentence for sixteen years; you have him now stating that a *skirmish line* would have answered the expectation of that order, "provided he acted according to the best of his discretion as a soldier." Solomon says that "a word fitly spoken is like apples of gold in pictures of silver." If General McDowell had spoken that word "skirmish line" sixteen years ago, it would have been "fitly" spoken. If he had spoken that word sixteen years ago, I believe General Porter would not have had this judgment pronounced upon him. The court-martial would not have found as they did, if General McDowell had said, sixteen years ago, that which he said at Governor's Island, that a "skirmish line" would have answered his expectations under that order.

I have said that General McDowell was, in my judgment, more responsible for the conviction of General Porter than any other witness. I think that General Porter's conviction rests more upon General McDowell's testimony upon this one single point than anything else in the whole case. So far as General Pope and General Roberts and Colonel Smith were concerned, they were giving but opinions; they knew little of the actual facts; they took their facts mainly from what General McDowell said. It was surmise or speculation or hearsay with them, but with General McDowell it was knowledge. They did not know that General Porter had not reached a point beyond Dawkins' Branch; they believed that he had, and they were led into that belief by the fact that General McDowell stated that General Porter had reached a point so near the Warrenton pike that no large force of the enemy could have interposed between him and the pike; they were led into that belief by the fact that General McDowell stated General Porter had reached a point three miles beyond Bethlehem Church; and the Board will recollect that General McDowell is the only witness who says that General Porter had reached three miles beyond Bethlehem Church. They did not know that General Porter had thrown out his skirmish line and was deploying his troops in line of battle upon Dawkins' Branch when McDowell came up. They did not know that he had said, "Porter, you are too far out; this is no place to fight a battle." They did not know that he had sent word to Porter, he had better remain where he was, but if necessary to fall back he could do so on his (McDowell's) left, and he would take King with him. They had not seen the evidences of a strong force of the enemy immediately in Porter's front. They did not know that McDowell and Porter had discussed the joint order, and that McDowell had concluded that the force in front was such that Porter had got as far as he could go, or as

he ought to go under that order, toward Gainesville, and that practically they must abandon the expectation of carrying out the joint order in the manner that they understood it. But further than that, they did not know, and I do not suppose that any human being outside of General McDowell knew, until he was examined at Governor's Island, that when General McDowell pretended he had said to Porter, "Put your force in there," he meant that a *skirmish line* would be sufficient to answer his expectation. Turn this evidence which way you will, I submit that you will find the conviction of Porter, and the findings of the court-martial, and the sentence which was inflicted upon him, have for their foundation the testimony of General McDowell. And I think, turn the evidence of General McDowell which way you will, that the foundation
1412 gives way in every direction. It is no wonder that this campaign was a "night mare" to him. He knew that a companion in arms of high rank had been unjustly convicted of heinous military crimes upon his testimony.

I may not be able properly to comprehend this testimony, its meaning and its effect. I may possibly do General McDowell injustice. I am sure I do not wish to do so. But in considering his position in relation to this case, I feel that it is the duty of counsel to assist the Board to arrive at truth. No advocate can afford to devote himself, if he is to accomplish any success in life, to causes which have not truth for their foundation. The peculiarities of this case are such that under no possible circumstances, I think, could General Porter's counsel afford to do anything else than to make their best efforts to assist you in so digesting this evidence, and so analyzing it, and so examining it, as to arrive at correct conclusions. And I can say conscientiously, that in endeavoring to arrive at the testimony that had most effect upon the minds of the court-martial, and to have produced the greatest impression upon the mind of the Judge-Advocate, and through him upon the President, this testimony of General McDowell to which I have been referring has appeared to be that which struck the fatal blow. It does seem to me that if what General McDowell stated on his examination before you be true, that a "skirmish line" by Porter would have satisfied his expectations at the time that he says he gave this order, "Put your force in there," then his recollection of the words which he used before the court-martial must have risen year after year, day after day, hour after hour, to plague his conscience, and make him feel the deep wrong that he had done to his comrade in arms.

He knew he had sworn that Porter had reached a point at least a mile or more in advance of his real position, and thereby laid the foundation for the charge against him of having retreated.

He knew he had sworn that he had ordered Porter to attack with his whole force; that he had sworn he did not know what forces were in Porter's front; that the distance between Porter's front and the pike was such that a large force of the enemy could not be between them; that the battle was raging to the right and east when he and Porter were upon Dawkins' Branch; that Porter was near enough to the Warrenton pike to have attacked; that the effect of an attack by Porter on the 29th would have been to secure a victory; and he knew that the whole effect of his testimony was to induce the belief that Porter had been most grossly insubordinate and derelict in duty. He knew all this, and he knew further that if he had related the facts as they really were, the effect would have been just the reverse.

He knew, too, that Porter was determined to have the case reopened if it could be accomplished, and, if he succeeded, the truth would be

brought to light. It was this consciousness of impending danger of exposure which was the nightmare that disturbed him.

I have endeavored to show you that it could not have been possible he gave such an order to General Porter. I do not know that it is necessary to argue it any further; because when General McDowell stated, as he did, that a skirmish line would have answered his purpose, you can see that as a matter of course the whole superstructure which was erected upon the allegation that he told Porter, "Put your force in there," meaning thereby that he should attack, crumbles away. This was the most material error made in the trial. If you concur in the views I have expressed, then I submit that you will find it proper to give to this point the full measure of importance which I have accorded to it.

1413 And if you take that out of this case, with the evidence which you now have before you, as to the time which the 4.30 p. m. order was delivered, I submit that there is nothing left of it.

THE ERROR OF SUPPOSED RETREAT OF GENERAL PORTER.

I now pass to what seems to me to be very clearly another error that had a marked effect upon the minds of the court-martial—I have alluded somewhat to it already: the supposed retreat of General Porter.

On page 308 of the Court-Martial Record, the Judge-Advocate says that General Porter wrote a note to Generals McDowell and King announcing a determination to withdraw, that is, retreat to Manassas, because of the approach of the enemy, and because the battle seemed to be going against the Federal forces.

And then he says:

> That this purpose was promptly carried out, substantially, if not to the letter, is made evident from the fact that at between five and six o'clock the accused was found at or near Bethlehem Church, surrounded by his troops, whose arms were stacked.

This proof as to the arms being stacked was made by Douglas Pope.

In looking at the old map [map of Northeastern Virginia, the one used by the court-martial] it appears to me that the court-martial must have come to the conclusion that General Porter with his whole force was back here at Bethlehem Church, or that General Morell was up here [at M 3 beyond Dawkins' Branch] and that General Porter had gotten back here with some portion of his men [near Bethlehem Church], and that there were no troops between. I do not know whether that is a correct understanding of what they believed to be true, but it seems to me from the remarks made by the Judge-Advocate that that was what was meant. He says that the accused was found at or near Bethlehem Church surrounded by his troops, whose arms were stacked. Now, whether he means that all his troops were there or not, I do not know. If he does, as a matter of course, we know that is clearly a mistake. The fact that General Porter was at Bethlehem Church and that some of the troops were there is not only true, but it is just the position that General Porter has always contended they ought to have been in under the circumstances; that is, from the time that General McDowell left General Porter with the understanding that General Porter was to take no further action, but was to remain in the position in which he was placed, holding the enemy in front of him in check as far as he could. General Porter planted himself at Bethlehem Church, as being the position in which he could most readily communicate with General McDowell or General Pope on the Warrenton pike, and with General Morell, and the front of his forces upon Dawkins' Branch.

I suppose that to an officer who knows what is to be done with arms when soldiers are not engaged, to say that the men were there with their arms stacked would not convey the impression which it seems to have made upon the mind of the Judge-Advocate. The Judge-Advocate could hardly expect soldiers to stand with their arms in their hands all the time, and I suppose there was no more convenient method of disposing of them, while the soldiers were at rest, than to stack them. Therefore, stacking arms under those circumstances would mean nothing. Yet the Judge-Advocate has made the point that they were there with their arms stacked. Apparently he seems to have thought that General Porter was there without the main body of his troops. Now, if he thought that, you will see how clearly it must have been an error on his part; and how manifestly delusive must have been the effect upon his mind of the class of testimony to which I have been referring,
1414 and how great must have been that effect, when it could induce a man of such intellectual strength, and one who had his familiarity with those subjects, to adopt the idea that, from the fact that those arms were stacked, it should be inferred that General Porter had retreated back to that point. I think the only way of accounting for it is by supposing that the poison which had been infused into his mind, and into the mind of everybody who was connected with this case at that time, was such that no matter what was said, if it only seemed to reflect upon General Porter and his position, it was believed, it was credited, it was received as a verity, without being questioned, examined, or analyzed.

The Judge-Advocate relies, for proof of this alleged retreat, upon the testimony of Capt. B. F. Smith, subsequently appointed a colonel of an Ohio regiment, who was in the front, as he says, at the time of the artillery firing, and alleges that he and the troops of his command then fell back under orders to within a mile or two of Manassas, where they passed the night, having arrived there in the afternoon. The Judge-Advocate relied upon Colonel Smith—not Mr. Choate's friend—and Capt. Douglas Pope, and a third witness, General Griffin. I think those are all that he cites for the purpose of proving the retreat. Now the account which Col. B. F. Smith gives of it is this:

> Later in the day, in the morning, we retraced our steps to the branch railroad running, I think, towards Gainesville or Manassas Gap, and followed the direction of that road some few miles. We then halted on some rising ground, where we could see the country beyond, over the woods, the tops of the trees. It was a wooded country. While we were halted there a battery of the rebels opened upon us, but fired some three or four shells only, I think; there may have been half a dozen. Our brigade then marched into a field, and the regiments were placed in order of battle—

I should have said that he belonged to Sykes' division, and was captain of a company—

> Our brigade then marched into a field, and the regiments were placed in order of battle. I recollect that General Morell's division was in our advance, on the lower ground. Some of our pieces replied to this rebel battery. I received permission from the commanding officer of my regiment to go to a more elevated piece of ground, a few rods distant, and while there I saw our batteries reply.
>
> A short time afterwards (probably half an hour) we received orders to retrace our steps and march back in the direction we had come. We then marched back to near Manassas Junction [I suppose that this is what produced the impression upon the mind of the Judge-Advocate of a retreat] and camped in the woods alongside this branch railroad I have mentioned. That night I was placed on duty as the field officer of the pickets of Sykes' division. About daybreak the pickets were called in and we marched towards the battle-field of Bull Run, and were engaged in that battle.

Then he says, on page 113:

Q. Look at the map before the court, if you please, and point out the place if you can.—A. (After looking at the map.) I recollect that where our brigade lay the railroad was in view, and also the road we took next morning.

That, of course, indicates very clearly where it was.

Q. According to the measurement upon the map, an inch to the mile, how far is that from Manassas Junction?—A. It is probably some two miles.

Two miles from Manassas would bring them to Bethlehem Church.

Thus you will see that this Colonel Smith was simply marched back, first having been moved up to the front in Sykes' division. We know that a portion of General Sykes' division was moved up to the front, and a portion, if not the whole of it, deployed to the left of the road and subsequently marched back near to Bethlehem Church, and there kept in connection with Morell during the day, camped at night, and
1415 moved off the next morning to the Bull Run battle-field. Colonel Smith was asked this question:

Q. Was there or not any such display of the enemy's forces as to make it necessary, in your judgment, to retreat before them?—A. I had no means of knowing. When we moved back from that position I supposed it was for some proper cause, but I did not understand at all what the cause was. I did not *receive any impression that we were retreating from the enemy.* I supposed that we were making a reconnaissance to feel the enemy in that direction, and, having found him, that we had moved back for some other purpose; and not knowing about the orders to the general, I remained under that impression.

Now it does appear to me that when this testimony of Colonel Smith is read there cannot be found in it the slightest evidence of a retreat. It is simply a description of a movement which you know to have been made by Sykes' division—that he first moved up that road, deployed in part, then retraced his steps, and remained in support of Morell during the rest of the day. The witness says himself that he did not receive the impression that they were retreating. They merely moved back on the road, and remained there in support of Morell.

The next witness upon whom the Judge-Advocate relies to prove retreat is General Griffin. The Judge-Advocate, on page 308, O. R., says, "it is yet further shown by General Griffin, examined by the accused, who says his brigade retreated from a mile and a half to two miles." Now I will read what General Griffin did say, and see how far that statement of the Judge-Advocate is sustained:

After the conversation [that is, the conversation between General McDowell and General Porter], General McDowell rode to the right. I received an order, almost directly after General McDowell had left, to recall my pickets, and orders to remove my command to the right. I attempted to go to the right, and moved probably six hundred yards, until, with the head of my column, I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I cannot say who, "You can't get through there." We then faced about, and moved back to the hill where the battery I first referred to was stationed.

Let me say that that battery was Hazlitt's battery, which was posted upon the right of the common road.

My brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I cannot say how long. The disposition was certainly one to repel an attack. It was a very good position for that purpose.

* * * * * * *

Q. What then took place?—A. We had started back towards Manassas Junction when this order came down the road. The order was carried by an orderly, and was stopped by Colonel Warren, who read it. We faced our command about immediately and started back. We were probably a mile and a half or two miles from the position referred to in my previous testimony as occupied by this battery. After I had faced

my brigade about, I rode ahead to General Morell, who had received the order, and asked him if he was going to attack. He replied in substance, "No, it is too late; and this order has been given under a wrong impression." I do not know but that, in justice, I ought to state what the substance of that order was. The substance of that order was, "That the enemy are retiring or retreating; attack and pursue him vigorously." That is, as nearly as I can recollect it, the substance of it. General Morell said to me, "Colonel Marshall, who commands the pickets in front, states that the enemy are receiving re-enforcement."

* * * * * * *

Q. Did your command spend the night in the place they then occupied, or very near it?—A. Yes, sir.

Then again:

Q. You have been asked how far you went when you were retreating on the evening of the 29th. Did you understand your corps to be *retreating at all that night?*—
1416 A. *No; I do not know that I did.* I supposed that we were going to change position somehow; that we had failed to get through on the right during the day, and that we were going to shift to some other position; where I did not know. We did not connect with anything on our right or on our left.

It is quite manifest from the testimony of General Griffin that this was simply a strategic movement. Neither of these witnesses testify, nor is there any testimony, nor was there any testimony before the court-martial which showed that there was any change in the skirmish line in front of General Porter, or of the batteries, from the time he arrived upon Dawkins' Branch and threw out his skirmish line and planted that battery—Hazlitt's battery. There never was a change in the position of that battery or of the skirmish line from that time until he left that position the next morning.

I suppose—and again my ignorance upon such subjects must be my excuse if I happen to make a mistake—that, practically, there cannot be a retreat of an army if its skirmish line and batteries and the divisions in support of them do not retreat; and if it be the fact that General Porter's skirmish line and his batteries remained in substantially the same position from the time he arrived at the most extreme point up to the time at which he left there the next morning, and both his divisions also remained in support of them, then, I suppose, these facts are an absolute and unqualified answer to the charge of a retreat.

The fact that there was no change in his skirmish line—I do not mean that the skirmish line itself had not fallen back or moved forward, but that there was no material change in the skirmish line—and that those batteries did not fall back, and the divisions remained in support, I suppose, as I say, is an absolute answer to the charge of a retreat. That the court-martial were led into error on the subject is probably not remarkable, when you find that they began with the proof that the distance from Bethlehem Church to General Porter's front was three miles.

As a matter of course, starting with that as the point to begin with, then the conclusion that he had fallen back three miles (in point of fact he was only two miles from Bethlehem Church that night) would be irresistible. Now that he did not do so, that he held on to that position, that General Porter regarded that position as eminently one to be held, there cannot be any sort of doubt; and that he clung to it, believing that it was probably the most important strategical point connected with the position of the Army of Virginia at that time; and to show that he did so believe, and that he felt it was important it should be held, and that he should keep the enemy in check there, I wish to read to the Board from General Porter's defense before the court-martial. It has been read once to you, and of course you have heard the whole mass of testimony; but probably the effect of any particular part would not strike your minds as it would now, when you are so much more familiar with the

case than you could have been at that time. In the defense which was made by General Porter before his court-martial, and which is to be found on page 287 of the old record, General Porter uses this language:

* * Or that I pushed on towards Gainesville on the morning of the 29th as ordered, or that I held my all-important position through the anxious afternoon of that day to divide and distract the enemy and hold his massing forces in check; or that on the morning of the 30th I plunged into the thick of the fight while that same enemy, which I had confronted and held from advancing the day before, moved swiftly on just as when, under the imperative order of 8.50 p. m. of the 29th, I left my strong position and thus opened his road, I feared he would move to make his furious onset upon our left flank. Personally, I was glad to be with my corps when the fight raged on the 30th; but I state my deliberate judgment, as a military man, that, but for that peremptory order, I had no right to be there. It was a false military movement.
1417 My post of real military power was the rising ground which Morell's division, backed by the rest of the corps, was holding. Had we been permitted to hold on there, the terrible attack upon our left flank on the 30th would never have been made. I could and would have stopped it there as I did stop it the day before. If the major-general late commanding the Army of Virginia, whose inspector-general is, at least, my nominal prosecutor here, doubts the truth of what I now say, let him produce, if he can, as I asked him to produce at the trial, the note which I sent him by Capt. Douglass Pope at dusk in reply to his order of 4.30 p. m. of the 27th, directing me to attack Jackson's right, and he will then learn, or at least recollect, what I at that moment judged concerning both the position of the enemy and my own. Let him publish that note, since it has not been produced, if he can even at this late day find it, and then all who choose to compare that note with what I have just stated will know that the military theory of the position, which I now express with all confidence, has ever since that day remained in my mind unchanged.

That was what General Porter said upon his former defense as to the position which he then occupied. General Pope did not produce that note upon that hearing; he did not produce it when asked to do so by General Porter in his defense. He did not produce it when asked by us to bring it before you, and it does appear to me to be a very extraordinary thing that any man occupying a responsible position, whether military or otherwise, should not be able to produce the notes and dispatches and letters which he receives upon important business. I suppose that it is the duty of the officer in command of an army to preserve the correspondence between him and his subordinates. I suppose that it is the duty of his staff carefully to see that they are preserved. I suppose, further than that, the correspondence between the commander of an army and his subordinate officers is the best picture that could possibly be given to the persons who are endeavoring to ascertain what the true succession of events was and the true relation which one event should bear to another. I suppose that if to-day we could have forced from General Pope General Porter's dispatches, the dispatches which he was sending on the night of the 27th and the morning and afternoon of the 29th and the evening of that day—if those dispatches could be produced before you, that they would show to you what was General Porter's real position in these transactions better than it is possible for you to ascertain in any other way.

Now, why have not these dispatches been produced? Why were they not produced upon the trial before that court-martial? Is it possible that they were lost? Will anybody credit that statement? Can it be supposed for one moment that a commanding officer, receiving dispatches from the commander of a corps, and against whom he says he had already been put upon his guard, in reference to transactions which he himself was feeling at that time might be the subject of complaint upon his part, dispatches received after, as he says, he knew that that commander had disobeyed one of his orders—is it possible that he would not have preserved those dispatches? Is it possible that he could not have laid his hands upon them when the court-martial was held, some three months

afterward? Is it possible he has not them to-day? Will anybody credit the statement that the commander of an army, under such circumstances, does not preserve and has not preserved dispatches of this character from such an officer?

I think that a witness standing in the attitude in which General Pope did towards this case—standing in the relation which he did towards General Porter, when he says that he cannot produce dispatches of this character, when he knows how essential those dispatches are to the ascertainment of the truth, places himself in such a position that every word he utters must be received with caution and care and scrutinized, for the purpose of determining whether the statement which he makes
1418 is corroborated or consistent with the testimony of other witnesses and of the facts in the case, before it can be accepted as true.

I suppose that it is entirely clear, and must be entirely clear to this Board, that there was no retreat at the time upon the part of General Porter's corps; that there can be no sort of doubt about it. It is not a question about which anybody can have a doubt. I have rather, in that matter, been endeavoring to show the Board why it was that the court-martial fell into error, because I do not consider it necessary to prove to you that there was no retreat; that is so clearly established that there is no argument necessary; and that the Judge-Advocate and the court-martial fell into that error, there is no sort of doubt.

ERROR AS TO TIME OF DELIVERY OF 4.30 ORDER.

Now we come to the consideration of the 4.30 p. m. order which has been read to you. That was one of the charges and specifications against General Porter, that he had not obeyed that order by attacking. I have no doubt myself that if the order had been received earlier, or early enough to have made the attack, General Porter would have made it. He supposed the dispatches he had been sending during the day had reached their destination. He supposed the facts as to his situation and McDowell's separation from him were fully known to Pope. Under these circumstances he believed it to be his duty to make the attack and made the effort, but was prevented by the lateness of the hour, as has been shown previously. Whether it would have been wise, whether it would have been proper or not to have obeyed that order literally, is perhaps a question that is not involved in this case.

General Porter's position at the time was a very peculiar one; for the joint order was of such a character that it had produced a serious embarrassment, as I think I have shown you—at least as I have endeavored to show you. But, however that may be, the answer which is made by General Porter as to this 4.30 p. m. order is simply that he did not receive the order until it was too late to comply with its terms.

General Sykes says, "Officer arrived as near sunset as I can remember" (page 177, O. R.).

Locke says the order was delivered "between sundown and dusk" (page 136, O. R.).

Monteith: "It was about sundown" (page 127, O. R.).

Weld: "After sundown" (pages 130, 132, O. R.).

Ingham: "After sunset" (page 199, O. R.).

These statements are called "opinions" by the Judge-Advocate, and he contrasts them with what he calls the "explicit and intelligent statements" of Captain Pope and his orderly.

Let us inquire what these explicit and intelligent statements are.

Here again let me refer to the record. It would seem that the court-martial there relied entirely upon the testimony of Douglass Pope and Duffee, corroborated, as they say, by General McDowell, General Pope, and General Roberts. That is the statement of the Judge-Advocate upon page 309 of the court-martial record.

General McDowell, and General Pope, and General Roberts knew nothing about how long it took Douglass Pope to ride from General Pope's headquarters over to General Porter's.

They could not have known anything about it, because General Pope and General Roberts only knew when he left. General McDowell saw him shortly after he had left. No one of them was at General Porter's quarters when it was delivered; therefore they could know
1419 nothing about it. It comes back to and rests upon the testimony of Douglass Pope and Duffee; that is, Douglass Pope says that the order was delivered about five o'clock, and Duffee says 5.30. Now, opposed to that was the testimony of General Sykes, Colonel Locke, Captain Monteith, Lieutenant Weld, and Lieutenant Ingham, who say that this order was received by General Porter about sundown. Yet the Judge-Advocate seems to have thought that Douglass Pope and Duffee were to be relied upon in preference to General Sykes, and Colonel Locke, and Captain Monteith, and Lieutenants Weld and Ingham.

You will recollect that the testimony of Captain Pope was that he had ridden over in about half an hour. It does not require any accurate knowledge in reference to how far a man can ride in half an hour. We all know that ten miles an hour upon a good road is extremely rapid riding. I think, if I understand it correctly, that the limit to fast driving in Central Park—and I am sure in Fairmount Park in Philadelphia—is seven miles an hour. Yet, when you see a horse going at the rate of seven miles an hour over those roads, it is pretty rapid driving. Ten miles an hour is very rapid driving in a wagon; it is unusually rapid riding under any circumstances. It is such riding as probably could not possibly be done over such a country road as that was. Therefore, when Captain Pope said that he rode that five miles in half an hour, it was enough in itself to have discredited the statement. If his horse had been entirely fresh and strong, and exceptionally fleet, possibly the horse might have made it; but it is more likely he would have either broken his own neck or that of the rider. It was enough to have made any intelligent man at once come to the conclusion that Captain Pope was simply stating that which was not true—which could not possibly be true. Now, when you take the testimony of Duffee, his testimony in reference to the road that he went was reasonably fair, apparently, in the first instance; and the time which he said it took was certainly much more likely to have been the truth when he put it three-quarters of an hour or an hour, I forget which—I think he said an hour.

If there had not been any countervailing testimony, such as that of General Sykes and of Locke, and of men who were immediately with General Porter, it would have been very difficult for General Porter to have shown on the former trial that that order was not delivered to him at 5.30, because Duffee's statement of an hour to ride five miles would have been reasonable; but, when we take the testimony of Duffee and Pope as it now stands, it is quite manifest that the court-martial were led to adopt and believe, in reference to the delivery of the 4.30 order, that which was altogether erroneous. When Captain Pope leaves the stand, and talks to his friends convivially, no doubt he states what was the truth; and that is the testimony which we produce before you by Colonel Moale and Captain Jones, who say that he stated he had lost

his way; that he was two hours in making the route; that it was near dark when he reached General Porter.

Now, when you find that he has made these statements in reference to this transaction, what is the proper course to pursue with the testimony of Captain Pope? Why, what you have to do, as I submit, is this: just simply strike it out of the case. When you find that a witness has sworn that he has done a thing within a given time which is practically an impossible time according to ordinary experience of men, and then that subsequently he has told a story which is entirely inconsistent with it, and that instead of its being half an hour, as he said before the court-martial, he has made it two hours, that he has stated he was lost,

I say you must simply, as it seems to me, strike his testimony out
1420 of the case. You must consider, so far as he was concerned, that the court-martial was imposed upon by Captain Pope when he gave his testimony, swearing that he delivered the order within half an hour.

Colonel Moale and Captain Jones are officers in the Regular Army. They are known to you as officers of standing and character. They did not volunteer as witnesses in behalf of General Porter. On the contrary, they were brought here through information obtained by General Porter, to the effect that these statements were made in the presence of a number of officers, of whom they were two. No one who heard their evidence can doubt either its accuracy or their integrity.

Now, how is it as to Duffee? Duffee swore that he delivered the order at 5.30, and when he came before you he was disposed to change it, and make it about three-quarters of an hour instead of an hour. Then, when put under cross-examination, he states that for sixteen years he was under the impression he had gone, if I recollect, in this direction down here [along Chinn's Branch], and passed through Five Forks, and found General Porter over there [near Bethlehem Church]; that on the Tuesday preceding the time at which he was examined before you he had gone down to this country with Colonel Smith, and that he had ridden along this road [up the Warrenton pike], and then ridden along this way [the Sudley road], and that he had then learned, for the first time in sixteen years, that he had traveled *this* road along Chinn's Branch, down in a southwestwardly direction.

That is the most remarkable testimony I ever heard. I do not wonder at his change of base. I rather think that if Rip Van Winkle had had Colonel Smith with him when he came down the mountains he would not have been so oblivious of Falling Waters and its localities as he is represented to have been.

Then there comes another thing which is most extraordinary in this case, which seems to abound in marvels, and it is this: that although Captain Pope and his orderlies were going along the Sudley road from New Market over to General Porter, back and forth from the neighborhood, according to their own statements, of four and three-quarters or five o'clock until seven or eight o'clock, and although during that time the two divisions of Ricketts and King, numbering from fifteen thousand to seventeen thousand men, were upon that road, they did not see a man.

Now I cannot account for that; I do not understand what the blindness was that prevented Captain Pope and Orderly Duffee from seeing those 15,000 or 17,000 men. I had forgotten Mr. Dyer, a man who saw a spire where it had never been, and who saw a church standing that had fallen into ruins a long time before, and a house six months before it was erected. He did not see the troops either. Here you have three

of these witnesses to prove the delivery of this order to attack—this important order—and it was an important order; it was an order which had in it that which should have warranted these men in making an effort to deliver it promptly; and it was important in its consequences to General Porter, too. Here were these three men who swear that that order was delivered in a given time, that they traveled along a given road, and that they did not see a man, when we know that upon that road were marching at this precise time from 15,000 to 17,000 men under arms.

Is there any doubt about it? We have proven that King and Ricketts were moving upon that road. These men say they traveled along that road. Now what is the solution of it? It is, in my judgment, that when General Ruggles gave that order to Captain Pope to be delivered,

1421 they then believed, as the court-martial has found, and as General McDowell has stated, they believed General Porter was up in this vicinity [beyond Dawkins' Branch]; and General Ruggles, when he pointed to the position where he supposed General Porter to be, pointed down here [in the direction of Chinn's Branch]; that these men did start in this direction, and when they got somewhere here [that is, in the vicinity of Compton's Lane or Lewis Lane] I have no doubt they came in contact with some of the rebel scoutes or skirmishers. I have doubt that then they started back in order to escape them, and my own belief is they crossed the Sudley road about New Market and went up towards Manassas, and finally that they found their way down in this direction [along the road from Manassas Station]. There is no other explanation, in my judgment, of the fact that they found no troops upon that road upon which this large body of troops was then moving. These men were not, in my judgment, upon that road at all when they were going to General Porter. That they went down in this direction was natural [along Chinn's Branch], because that is the direction Ruggles told them to go; how far, it is of course impossible for me to say; but I think that is corroborated by the fact that this man Duffee said that he supposed they had taken the Five Forks road. Hence it would be extraordinary that they should have just come down there, and then have turned and gone back [that is, near the Chinn house]. There was no reason for their doing it. If their purpose was to go to Porter on Dawkins' Branch, or to the westward of it, they would naturally have gone down here in the direction of Compton's Lane. I take into consideration the fact that this was the direction in which they supposed General Porter had gone; that this was the direction, practically, in which they first moved; and that this was the direction that General Ruggles told them to go. When you bear in mind the fact that they did go back, and that they found no troops upon this road which they say they were traveling, the conclusion is irresistible that they did not get upon that road at all, except to cross it—that is, the Sudley road; that they were lost; that they came in contact with the rebels, then came back, then came over to the Manassas road, and did not reach General Porter, according to the statement of the witnesses called by General Porter, until about seven o'clock.

It seems to me manifest that there was a mistake made in reference to the time at which that order was delivered; and there being such a mistake, that it is one which it is proper now to have corrected.

ERROR AS TO THE PRESENCE OF LONGSTREET'S TROOPS IN FRONT OF PORTER ON THE 29TH.

I have already referred to the opinions which were given by Generals Pope and McDowell and Smith and Roberts upon the trial of Gen-

eral Porter, and I do not propose to dwell much further upon that except to call the attention of the Board to this, that there is the most extraordinary inconsistency in the statements which were made by Generals Pope and McDowell, especially with reference to one of the essential points which was under consideration before the court-martial—the question of the appearance of Longstreet's troops upon the battle-field.

I have already called attention to that which is most remarkable in General Pope's position, which is, that when in his orders of the 26th and 27th he had recognized the near approach of Longstreet, and when he says in his testimony that he certainly expected the junction of Longstreet with Jackson upon the afternoon of the 29th, he, notwithstanding, should have inserted in the joint order the statement that the indications were that the enemy would not be up before "to-morrow night or the following day." And when you come to examine the testimony of General Pope before the court-martial, and of General McDowell also before the court-martial, you will find that they ignore the presence of Longstreet's force upon the battle-field.

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General McDowell in the course of his examination says:

A. I did not know anything about Longstreet's corps or Jackson's corps. * * To whom they (the forces spoken of by Buford) belonged, or to whom they were going, was not a matter of which I was informed. (McDowell, page 88, O. R.)

Then he says:

To have defeated General Porter in that attack would have required a large force of the enemy, which would have relieved the attack in front, and, I think, would have still resulted in a success to our side, to our army generally. (Page 97, O. R.)

Q. (By the COURT.) From your knowledge of the condition of things on the 29th of August, was there any considerable force of the enemy in front of General Porter's corps near the Manassas Railroad on the south side of it?—A. I have no positive knowledge on that point. I have not supposed that there was, but I cannot support that supposition by any positive facts. (Page 221, O. R.)

Had no *judgment* whether the force in front of Porter all afternoon of 29th was the only force reported by Buford.

Did not go into that question. I do not know or did not know. (Page 804, N. R.)

Made no estimate of size of regiments reported by Buford. Did not know what the force was by number of regiments. (Page 798, N. R.)

Did not know the force coming up there to be Longstreet's force. (Page 774, N. R.)

Cannot say at what particular time learned Longstreet commanded that force. *Grew into knowledge* of enemy's position since that time. (Page 775, N. R.)

On 29th I was told he (Longstreet) was there. (Page 775, N. R.)

Now in doubt whether Longstreet was there or not. (Page 776, N. R.)

In recurring to the facts, it will be found that in order after order issued by General McDowell, he knew of the presence of Longstreet, first at Waterloo, and afterwards at White Plains—Waterloo being, if I recollect right, about twenty miles from Thoroughfare Gap, and White Plains being only three or four miles from Thoroughfare Gap—that the presence of Longstreet in the vicinity of Thoroughfare Gap was recognized by him, and that he gave orders to Ricketts for the purpose of preventing Longstreet from coming through Thoroughfare Gap; that he recognized the near approach of Longstreet by his official acts to an extent which must prove, beyond all possible doubt, that General McDowell should have known that Longstreet was marching directly for the battle-field, and practically was in front of him and General Porter at the time they were upon Dawkins' Branch. General Pope recognizes this thing in the same way. Yet, before the court-martial, both General Pope and General McDowell ignore this fact, and convey the impression to the minds of the court-martial, not only that they did not believe that there was a force in front of General Porter, but that from the circumstances there could not have been such a force in front of General Porter as was alleged by him.

There is known in the law a state of mind which is described by a judge in a very able opinion as being collusive blindness—the condition in which a man is when defending himself from a charge, upon the ground that he did not know certain facts, when from his position and relation to those facts he must have known or ought to have known them. The learned judge says, that when such a condition exists, the man must be "collusively blind," which means, in homely phrase, that none are so blind as those who will not see. Now I cannot describe the apparent ignorance of General Pope and General McDowell in reference to this force of General Longstreet better than as "collusive blindness."

Both those men had their educations at this school, where I
1423 presume something is taught of multiplication, division, and subtraction, and I suppose it was possible for them to solve a problem according to the single rule of three. Knowing the position that Longstreet was in on the morning of the 29th, the road and direction he was marching, and the distance he would have to go, it would be very easy for them to determine where he would be at twelve o'clock in the day. Yet, with all these facts before them in reference to the presence of Longstreet, with their own declarations showing beforehand that they knew the facts, they gravely told the court-martial and led them to believe that his force was not there to such an extent as seriously to impede General Porter in moving along. For when General McDowell is asked the question whether there was any insuperable obstacle to General Porter continuing his march to Gainesville, his reply was, that there was none in his judgment to his marching, and that he could have marched. From what occurred on the battle-field the next day, I rather think that if General Porter with ten thousand men had attacked Longstreet's twenty-five thousand he would have found a considerable obstacle, if not an insuperable one, and that in all probability, instead of having this investigation and that of the court-martial, he might have had the opportunity of spending some time in a southern climate.

But I suppose that if anything is established in this case, it is the fact that Longstreet was there with a force of not less than twenty-five thousand men, and that he was exceedingly anxious that General Porter should make an attack upon him; that Lee wanted to initiate the attack, and that Longstreet wanted Porter to attack, because he felt that then he could have destroyed Porter's force, and after doing so he could have swung around on Pope's left flank, as he did the next day, and the Army of Virginia would have been an easy prey.

ERROR TO HAVE FOUND THAT PORTER SHOULD HAVE MADE AN ATTACK.

Now, should General Porter have made the attack? I assume that from the time that General McDowell left General Porter, if not from the time they found that Longstreet's forces were in front of him, at any rate from the time they were separated, the joint order ceased to be obligatory upon Porter in many of its most important provisions. For instance, I suppose that he could not any longer think of going on to Gainesville. I suppose, however, that he was bound to think of the necessity of communicating, if possible, with the force upon his right. I suppose that he was bound to keep himself in a condition to fall back of Bull Run that night. But whether he was to attack or not was a question, as it seems to me, from the time that General McDowell left him, wholly within his discretion. I think, then, it was for him to determine what his course

should be, because the conditions under which the joint order was given were entirely changed.

The rule, as it appears to me, which applies to such cases, is well stated in certain extracts taken from a French work recently published in Paris. It is entitled "The Method of War," and the extracts, which are translated, will be found on pages 753, 754, and 755.

The reputations of Napoleon, the Duke of Wellington, and Archduke Charles are such as entitle them to consideration.

This is from Napoleon I:

A military order, even, requires passive obedience only when it is given by a superior who, being present at the moment when he gives it, has knowledge of the state of things, can listen to objections, and can give explanations to the one who is to execute the order.

1424 This is from the Duke of Wellington, a general order from the camp of Jansen, November 11, 1803:

In making known to the army the decision given by the court-martial in the affair of Capt. * * * Major-General Wellesley thinks proper to explain to the troops that it is necessary to well distinguish the cases in which it is allowable or not for an officer to act at his own will.

It may frequently happen that an officer receives an order which through circumstances unknown at the moment of giving it, by him who gave it, is impossible to execute, or *the execution of which would be so difficult or so dangerous that there would be a moral impossibility to conform to it.* In a case of this nature Major-General Wellesley would be very far from wishing to prevent detached officers from acting freely.

But Capt. * * * was not in that situation; he had and has had no private information which the officer who had given him his orders did not also have; and then it was his duty to obey.

ARTHUR WELLESLEY,
(DEPUIS DUC DE WELLINGTON).

Jourdain's army having forced the passage of the Lahn (July 7th, 1796), the first intention of Wartensleben, who commanded the Austrian corps left before it [the Lahn] by the Archduke Charles, had been to fall back behind the Widda, because the French, having found the garrison of Hamburg to fall back upon Usingen, were already threatening his line of retreat. But the 9th of July, having received a dispatch in which the Archduke wrote to him to withdraw from the environs of Friedburg, only *after having tried the fortune of arms,* he changed his design, and resolved to attack Jourdain that same day.

However, Wartensleben, in his position at the time, should not have attempted an attack. He could in fact direct it only against the center of the French army; since in moving his left he left Jourdain at Hamburg on his rear; and in advancing by his right he abandoned his line of retreat upon Frankfort.

In spite of these dangers he had the temerity to attack, and in what a situation! With forces inferior in number, in a position in which his wings, deprived of support and threatened with being constantly outflanked, had no reserve.

In vain will it be said that the order which the Archduke Charles had sent him was the ground of his resolution. *Wartensleben had the right not to execute it; the Archduke Charles, then near Pforzheim, did not know his situation when he gave him the order.*

A general-in-chief who indicates to subordinates, detached afar, their lines of operations and the strategic points of their defensive positions, has performed his duties. One cannot expect from him precise and detailed orders when their execution depends not only on the circumstances of the moment, but also on the actual position of the troops.

L'ARCHIDUC CHARLES.

I should suppose there was great good sense in that, and that the rule is one which accords with natural reason. In this case General Porter, I think, was acting practically under the rule laid down by the Archduke Charles. Ought he to have attacked? He thought he should not do so, as he knew the case. That he knew it, there cannot be a doubt. There was something said, if I recollect aright, by the learned Recorder in his opening, about General Porter's being tried according to the knowledge which he had of the presence of Longstreet's force, as though he had not then a knowledge of them. There was hardly a witness examined before

the court-martial who could be supposed to know anything about the subject, to whom the question was not put in reference to Longstreet's force. It is to be found all through the testimony; it is to be found in the defense of General Porter; it is to be found in the opinion of Judge-Advocate-General Holt. It was contended by General Porter that Longstreet's force was in front of him—at least there was an enemy's force there, which was designated as Longstreet's; not that they meant to say that Longstreet personally was there. I do not suppose anybody knew that he was personally present.

But the question which was involved in the issue before the court-martial, and the one which has been the bone of contention from that time to this, was, whether Longstreet's force of twenty thousand or
1425 twenty-five thousand men were present that day, communicating with Jackson, and extending from north of the Warrenton pike southwardly across the Manassas and Gainesville road, and formed in front of General Porter, in such a way as that they could have enveloped and destroyed him, if he had been wild and insane enough to make an attack. That they were there is unquestionable. Whether they were on Pageland Lane at nine o'clock or not; whether they had reached up to the Gibbon battle-field by twelve or one o'clock, exactly the position that they occupied at a given hour, may not be a matter of importance for us to establish. But the fact that they were there, practically in a position such as that if General Porter had made an attack they would have thrown upon him that twenty thousand or twenty-five thousand men, I think is as clear as any question can be which has to be settled by testimony, and after the occurrence of the events. It is not a question that is dependent upon the witnesses whom General Porter has produced. It is not a question dependent upon the witnesses produced upon the former court-martial, nor upon the witnesses produced before this Board. There is testimony in this case which seems to me to be conclusive upon this point, which was furnished by General McDowell to General Porter when he was at Dawkins' Branch, at twelve o'clock, when they were discussing the joint order, and that was the dispatch of Buford to McDowell, to the effect that those troops were passing through Gainesville three-quarters of an hour before that message was dated, which would bring it at about half-past eight o'clock that morning.

It is utterly idle for General McDowell to endeavor to screen himself behind the pretense that General Buford reported only fourteen regiments or seventeen regiments, and that he knew of no other force. Why, he knew that the whole of that force under Lee was at Thoroughfare Gap or at White Plains on the day before. He knew that they had made an attack upon Ricketts, and that they had been strong enough to drive him away; and he knew that Lee was moving in that direction with as much rapidity as possible, for the purpose of reaching Jackson. He knew these facts, and it is perfectly idle for him to endeavor to screen himself from the censure which he must bring upon himself by pretending that he did not know that those troops were there, when he had this message from Buford stating that those troops were passing through Gainesville; and he should have known—he must have known—his mind, if it acted at all, must have conceived the idea that Longstreet was moving with his whole force through Thoroughfare Gap, and on the way to the battle-field through Gainesville for the purpose of reinforcing Jackson. That being so, when the binding force of the joint order had ceased in the manner in which I have indicated, when left to his own judgment and his own discretion as to what he should do, when

he did not know that there was any heavy battle progressing, when he had not received from the commanding officer, General Pope, any direction which led him to suppose that an attack upon his part was expected or was wanted or needed, or that the forces were in such condition as required it, when he had received intimations and directions from General McDowell, or instructions, that the purpose was not to fight a battle there, but to fall back behind Bull Run, when he knew that he had this force, opposed to him, which, if he attempted to assault under the circumstances, would simply destroy him, and that, therefore, he would be exposing the left of General Pope's army to destruction; when he knew these facts, what was General Porter to do?

He did what a discreet and prudent man should have done; he
1426 remained there in his position, endeavoring to feel the enemy by a skirmish line, giving information as rapidly as he could communicate and as frequently with General McDowell as he could, making such movements as he supposed were necessary for the purpose of holding the enemy in the position that they were in; and, more than that, accomplishing that result.

According to the testimony of Colonel Marshall (a member of General Lee's staff), and of others, if I remember correctly, that force of Longstreet's was held in check during the whole of the 29th by General Porter's position. But even if it had not been proved by witnesses then in the opposing force, the facts as you have had them established show that Porter did so hold the enemy in check. Thus he was accomplishing that which was of benefit to the force with which he was co-operating, the army to which he was attached; he was exercising the wisest and best judgment which he had under the circumstances when he was too far removed from the commander-in-chief to communicate immediately with him; he was using the judgment which he deemed to be proper under all the circumstances. And yet, after having passed that anxious day in the discharge of this duty, after having held this force of twenty thousand or twenty-five thousand men in that position that day, and having held them in a position so that if he had been re-enforced, as he asked to be, he could, on the 30th, have prevented that disaster which overtook those troops; for doing this duty, for holding on there as he ought to have done, for taking the responsibility which he ought to have taken, he is arrested, tried, convicted, and sentenced to be dismissed from the Army, and to be prevented from holding any office of honor or profit under the Government of the United States.

CONCLUSION.

Now, it does appear to me, if you will take General Porter's conduct from the beginning of this campaign down to the time at which this investigation closes, that throughout he manifests in conduct the utmost anxiety in the performance of his duty; that he seems to have been watchful, to have been energetic, to have exerted himself all the time. While General McDowell seems to have felt that it was not even necessary that he should send any information to General Pope of his own separation from Porter, nor of the fact that he had learned through General Buford of the seventeen regiments passing through Gainesville early in the morning, General Porter was sending dispatches and giving information continuously. If you will recollect, General McDowell did not send General Pope the information communicated by Buford's dispatch. General Pope says that he did not know that fact until seven o'clock on the evening of the 29th. So, while General McDowell did not think it

necessary to communicate so important a fact as that, which General Pope says he was expecting to take place on the afternoon of the 29th, General Porter was diligent, watchful, earnest, communicative, and faithful in the discharge of his duties throughout.

There are many other points which this case presents to which I do not propose to allude. I shall leave them, very sure that my colleague will take up anything that is left untouched by myself or by Mr. Maltby; and I am very sure that now this Board fully understands and comprehends this case.

We have endeavored to show you by the testimony which we have introduced, and by a proper analysis and examination of the testimony taken by the court-martial, that General Porter was not guilty of disobedience of the order to march at 1 a. m. on the 28th of August; that
1427 the character of the night and the obstructions in the road justified his not doing so.

We have endeavored to show you that he did not disobey the joint order of the 29th to McDowell and himself; that he did not retreat as charged; that there was not a battle, in the sense implied in the specifications, upon the 29th.

Let me here say to the Recorder that I do not wish to contend that there was not a battle, or that there was not heavy fighting or hard fighting, and that some of the fighting there was probably as hard as was ever known—I do not doubt that for a moment. All that we mean to say is that there was not a general battle, a continuous battle, a battle from morning until night.

That we have shown, we think, General Porter did not violate any duty by failing to come upon the battle-field, as charged against him.

That he was not guilty of any military crime in not having attacked, as charged.

That the 4.30 order of the 29th was received by him at too late an hour to have been carried into effect.

That by its terms it involved an attack upon Jackson's right and rear, and this could not have been done by him.

That throughout the 29th of August, 1862, his conduct was that of a faithful and zealous commander, discharging his duty discreetly and wisely, and so as best to serve the interests of his government, and aid the army of which his troops were a part.

Now, the question may be asked, how it came about that a man who was so zealous in the performance of his duty, and, as we allege, was so faithful in its performance, could have been convicted by this court-martial of these offenses. I was asked that question last summer by an old lady, for whom I have great respect, sitting upon the piazza of the hotel. I felt a little perplexed to know how to answer it. She asked a question further which relieved me of my difficulty; how it happened, if they thought he was guilty of this offense, that they did not find that he should be shot. Well, I said to her, that that reminded me of what I had once heard in reference to an Arkansas jury who tried a murder case; the evidence was submitted, and the judge charged the jury, who then went out to consult. They finally came to the conclusion, and so found, that the prisoner was guilty of murder in the first degree, but with a slight suspicion that he was not the man, and therefore they did not think he ought to be hung.

I rather think that is true in reference to this petitioner; I rather think the court-martial found General Porter guilty of these high military crimes just with a slight suspicion that he was not the man. I think that is the reason they did not sentence him to be shot.

The truth is, they made several material mistakes—
As to Porter's location.
As to retreat.
As to presence of Longstreet.
As to battle.
As to time of delivery of 4.30 order.

Now the time has come, as we think, for rectifying these mistakes. We think that, after this long period of sixteen years, this investigation can be conducted free from any bias or prejudice; that the circumstances under which the trial took place and the influences that were then operating, the influences that then made the minds of men inflamed, made them ready to receive extravagant statements, made them susceptible to influences, to prejudice, to bias—influences from
1428 which no man can be free under certain circumstances, have passed away. We know that when there is any great national disaster in any part of the world, when there is a series of defeats to an army or navy, there must always be some one upon whom the popular feeling can turn, and upon whom the consequences of that disaster can be visited. And when the feelings of the people are aroused, when one of those popular commotions sets in, it ramifies and extends, and seizes upon all classes; then it is that it is almost impossible for the judgment of any man, I care not how calm and deliberate he is, I care not what his experience or integrity may be—it is almost impossible for the human mind, frail as it is, to resist those influences, and look at a question which involves such issues, frankly, candidly, unbiased and unprejudiced.

Now this record, as it seems to me, from the beginning to the end—and I speak with all due respect for the court-martial and its Judge-Advocate—it seems to me that this record, from the beginning to the end, shows the influences of which I have been speaking, because while the results were produced in the main by these stories of Generals McDowell and Pope, yet those stories had a degree of inconsistency and contradiction about them which I think, if they had been analyzed as they can be now, it would have been seen how unreliable and contradictory they were. But it was a time when the minds of men did not weigh with the coolness and deliberation that can be employed at a period sixteen years after the occurrence of the events.

Nor is this at all an unusual thing; for there is not an appellate court in the land which is not constantly reviewing the proceedings that have taken place in some court below, where judges who are supposed to be entirely free from partiality and from prejudice have yielded to influences of one kind or another, and where the appellate courts have been compelled to set aside their judgments, either because they have been unable from prejudice or partiality or bias to render a correct judgment, or because they have made a mistake, without impairing, in the slightest degree, confidence in the integrity and honor of the judge and court below. And I want it distinctly understood that I do not mean by one word which I have said to impute to the court-martial, or to the Judge-Advocate-General who conducted this case, any want of honor or integrity, or to cast any imputation upon their motives or conduct in the course of the trial.

Before closing, I wish to say a word as to the course pursued by the Recorder (Major Gardner) in conducting this examination. I think that General Porter and his counsel are under obligations to him for facilities afforded by him in obtaining testimony. While I do not mean to say he has in any respect transcended his duty in this regard, yet he has so

performed that duty as to aid us most materially in placing before you the facts.

Further than that, while there has been at times more or less friction in the conduct of the investigation, I wish to say for myself that I have no complaints to make of the course he has pursued. He has done what he no doubt conceived to be his duty, and he has done it with the most earnest zeal. I wish to say to you and to him that whatever differences have arisen in the conduct of this case, I accord to him a sincere desire to do his duty according to his judgment.

I think proper also to say that every reasonable facility has been afforded by the War Department to General Porter in obtaining papers and information. Its officers have furnished them readily, and their cheerful compliance with his requests, together with the assistance rendered by the Recorder, to which I have referred, has enabled Gen-
1429 eral Porter to place before you his case far more clearly and fully than he or his counsel ever anticipated would be possible. But to return to the errors made by this court-martial.

My whole effort has been to show that they have been misled, and have fallen into these errors chiefly by reason of the testimony which was adduced before them; that those errors are now manifest and clear; that that record cannot be read without finding them; and if you believe that, then it is your duty so to find, and so inform the President of the United States. If you come to that conclusion—if you come to the conclusion that they did make these mistakes—if you come to the conclusion that they did so, either by reason of the testimony as it existed before them, or by reason of the testimony which has been brought before you, in either event we feel that it is your duty, under the circumstances, so to declare by your finding, and to vindicate General Porter from the charges which were made against him, which destroyed his name and his reputation at the time the trial took place. So far as any further recommendation may be concerned, I have no suggestion to make. The only effort I have made is to have the facts so presented as to induce you by your finding to restore General Porter's name to that page of history which, thus far, since 1862 has been a blank; to restore it there with the purity and integrity and the honor for which he exerted himself as a soldier, and which he has always endeavored to maintain as a man.

The Board then, at 6 o'clock p. m., adjourned until Wednesday morning at 10 o'clock.

FORTY-FIRST DAY.

WEST POINT, *Wednesday, January* 8, 1879—10 *a. m.*

The Board met pursuant to the foregoing orders and adjournment.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

Mr. BULLITT said: I wish to make an explanation to the Board, which should properly be done before the Recorder proceeds with his argument, as to the theory which we have of the dispatches which were introduced by him. In order to do that I will read what the Recorder said in his opening:

On page 491 of the evidence taken before you, the Recorder says:

GENERAL M'DOWELL'S ORDER TO THE PETITIONER.

If there is one thing more than another which the petitioner here claims with constant and unvarying pertinacity and vehemence, it is that when General McDowell left him he had given him no orders to go into action with his troops, and thereafter that he gave him none. He was asked, when a witness, among other questions to the same end, "If he did attempt to make any movement in either of the directions named?" [To the front or right, or to the front and right.] He said: "Not directly to the right; I did to the right and front, and when I received the last message from General McDowell to remain where I was, I recalled it."

He was then asked:

"Did you make no attempt to go to the front, or to the right and front, after that message?"

And said:

"I made no attempt with any body of troops."

1430 He was further asked:

"After General McDowell left the witness did the witness not know he was expected by General McDowell to move to the right, or right and front?"

And said:

"I did not."

In his defense before his own court-martial, he is still more emphatic; and in speaking of the period of time from noon on the 29th to the hour of Pope's order of 4.30 p. m., says:

"But it is not true that General McDowell then, or at any time during that day, gave me any such orders 'to put my troops in there,' or to do anything of the kind; and fortunate is it for General McDowell that it is not true, for if he had given me any such mandate to thrust my corps in over that broken ground, between Jackson's right and the separate enemy massing in my front, the danger and disaster of such a movement would have been then and now upon his hands. I am glad that General McDowell is utterly in error upon this point, and is in no way chargeable with such fatal military blunder."

But in his statement before this Board, General Porter publishes two of his dispatches of the 29th (p. 35), numbered 28 and 29. In the first he orders General Morell (commanding the advanced division of his corps) to "push over to the aid of Sigel and strike in his rear."

In the second, addressed to Generals McDowell and King, he says:

"I found it impossible to communicate by crossing the woods to Groveton."

Communication, we must recollect, was by the joint order directed to be established by Pope between Generals Porter and McDowell and the left of the main army, where Brig. Gen. John F. Reynolds was.

Then the Recorder goes on:

NEWLY-DISCOVERED EVIDENCE.

General McDowell swore he ordered General Porter "to put his troops in there." The latter denied it, but these dispatches just cited show, even in petitioner's own statement to this Board, that he knew it was expected of him by McDowell, and now we come to *newly-discovered dispatches* on the same subject, of great importance, viz, one addressed to General McDowell, dated 29th August, 6 p. m., which says:

"Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened on us."

Another, addressed to General McDowell or King, says:

"I have been wandering over the woods and failed to get a communication to you."

In the third, addressed to General McDowell, he says:

"The firing on my right has so far retired that, as I cannot advance and have *failed to get over to you except by the route taken by King*, I shall withdraw to Manassas."

* * * * * * *

It will be seen from some of the foregoing extracts, taken in connection with the "sketch of 2d Manassas, August 29th, 1862," published as a frontispiece in General Porter's statement before this Board, that General Porter, after receiving McDowell's last message, deliberately reported that he had made an attempt, or attempts, of some kind or other, to move some of his troops over the country to the United States forces at Groveton or near Groveton—

I think it will be made apparent, and I wish the Board to bear this in mind, that the attempt made by General Porter was before that message

was received from General McDowell, and not afterward. I think it will be made manifest when you come to look at the current of events—

though, when especially interrogated with respect thereto by General McDowell, while on the witness-stand, he denied having done so. They show, as before stated, that he did not feel himself held to a state of *inaction* by any order General McDowell gave him; and they also show that what he says he attempted was in the exact direction of what McDowell states he ordered him to do, to wit: "To put his troops in there." [In the direction of the Warrenton pike.]

In view of petitioner's claim that as this attempt to move Morell over to the Warrenton pike, "to aid Sigel," or "over to McDowell," was made after the latter had left him, he had then become independent of McDowell, "free to exercise his own discretion," and in view of petitioner's most emphatic declaration, made in his defense before his court in 1863, and repeated as emphatically in 1870, that any such movement would, in his judgment, have been a "fatal military blunder," involving disaster, *it is not only an obvious inference but an inevitable conclusion that he must have been acting under the constraint of some superior authority; that he would not merely of*
1431 *his own motion have involved his troops in the consequences of, as he states it, "a fatal military blunder."* And as, during this time, there was no authority acting upon him but that of Pope and McDowell, during the time the latter was with him, and as he received no orders from Pope, *"he must have acted, in the particular in question, under the order McDowell gave him before they parted and while he was still subject to his control!"*

Therefore, in the assertion by General McDowell that before he left petitioner for the last time on the 29th August, he did order him *to put his troops in there* [in the direction of Warrenton pike], and in the denial by petitioner that McDowell gave him any such order, it is petitioner's memory and not McDowell's that is in fault.

I want to read also from page 499, where the Recorder also treats of this subject:

Again, in a newly-discovered dispatch, this time to General McDowell, he said:

"The firing on my right has so far retired that, as I cannot advance and have failed to get over to you except by the route taken by King, *I shall* withdraw to Manassas."

Did he withdraw, as he in this dispatch positively announced he would? We shall find that he did send much of his corps back there. In the previous dispatch of 4 p. m. he had said he determined to withdraw to Manassas. He afterward concluded not to. In this dispatch to McDowell, dated 6 p. m., he said he did withdraw Morell, who held the advance.

* * * * * * *

It was not necessary he should go back to Manassas Junction, though a considerable portion of his troops did move back by his direct orders.

* * * * * * *

Here let me invite attention to some of these dispatches of petitioner, in view of the fact that it is shown that *he never made any efforts whatever to go to the right after McDowell left him.*

In one to McDowell he said (I do not give them chronologically):

Now this is what is quoted:

"Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him. * * * I am trying to get a *battery*, but have not succeeded as yet."

Again to Generals McDowell and King:

"I found it impossible to communicate by crossing the woods to Groveton (4 p. m.)."

And that the Recorder has put in brackets, as though it had been delivered at 4 p. m. As I understand it, that is the dispatch which the Recorder supposes to have been sent by Lieutenant Weld to General Pope. I think that is clearly a mistake.

Again, in another dispatch to General McDowell or King, at 6 p.m.: "I have been wandering over the woods, and failed to get a communication to you."

Again, in another to General McDowell:

"Have failed to get over to you except by the route taken by King."

As to these, I have only to say that the evidence of accused's witness, Lieutenant Stevenson, on the original trial, shows how the latter crossed the country from the left of General Pope's army with the mail for his regiment (Thirteenth New York Volunteers), which held General Porter's advance (p. 200, G. C. M. Rec.). The evidence, I believe, all shows he made no effort to get over to unite to Sigel's left, and also that he had six or eight batteries with him.

Now, there is a difference here which I think the Board already may have in their minds; but I deem it very important, with what I am going to say, that it should be understood. The fatal military blunder which General Porter always alleged to have been the one that General McDowell directed him to make was to have moved solely with his own corps from this direction around here [indicating movement towards Britt's and the woods northwest] while the enemy was here [between Hampton Cole's and Vessel's]. That I understand to be what he considers a fatal military blunder. You recollect that shortly after General McDowell came up, General Porter and General McDowell rode over to that point. [Indicates across Manassas Gap Railroad, northeast.] At that time General Morell was here. [Indicates right of Manassas and Gainesville road, near Dawkins' Branch.] They rode over to that point, and there occurred that conversation which has been narrated, and, as General McDowell went off in this direction along the railroad, General
Porter called to him, "What shall I do?" to which General
1432 McDowell simply waved his hand, leaving, as we allege, General
Porter in a state of uncertainty as to what General McDowell contemplated doing. General Porter returned from this point across the railroad. As he crossed the railroad, moving in this direction [indicates northeast], he saw a movement of the enemy here [northwest, beyond Thomas Nealon's in the direction of Hampton Cole's]. What it was that they were doing I am not prepared to say; but this movement of the enemy determined him that he would make an attempt to advance. He immediately sent—being that he could not do it with his own corps, and feeling that General McDowell had not left him in such a way as that King had absolutely gone—he sent Locke, his aid back for the purpose of holding on to King's division, and determined that he would deploy General Morell's troops across the railroad and Sykes on his left, holding King in reserve, and then, instead of making the movement which he has pronounced to be a military blunder, moving his own corps across there [indicates direction between Carrico's and Lewis Leachman's, northwest, toward Meadowville Lane], he determined to move here [indicates between Manassas and Gainesville road and Carrico's], from the fact that the enemy were in his front, as the only one which was feasible. Putting Morell across the railroad, he thus protected this road, because, as I understand it, it was important that the enemy should not be allowed to have the benefit of it; then having Sykes so as move up on this road in this direction [indicates Manassas and Gainesville road toward Dawkins' Branch, and then to the right], and General King in reserve.

Now, in that statement of General Porter which was laid before you this language will be found:

> While returning to my command, I saw the enemy's infantry coming to the railroad and artillery moving to a slight elevation north of it.
>
> Impressed as I was with the strength of the force in my front, I yet determined to make the effort to move towards Gainesville if it was at all feasible to do so.
>
> Believing that then, if ever before the enemy formed in too great strength so close to us, was the time to strike with our united forces, I determined, General McDowell having left me, to take the responsibility, and, directing Morell to continue the deployment for an advance, sent my chief of staff, Colonel Locke, to instruct King not to go away. Sykes was coming up as rapidly as Morell's deployment permitted.

That describes the movement which I endeavored to describe a few moments ago. General Morell moved across the railroad, and moved in this direction [indicating a partial northeast direction]; and it would appear from a dispatch that I shall refer to, as one of the newly-discovered dispatches, that he endeavored to have General Morell's right to

connect with the left of the force over here [indicates the general direction of Groveton]. Of course it is impossible to say at this late day everything that passed through General Porter's mind that day. But I can readily understand, that having no knowledge of the topography of this country prior to this time, having no knowledge except what had been obtained by Porter and McDowell having gone to that point, when he pushed Morell over, he still thought that by moving along in this direction it would be possible to communicate with the troops over there. That would seem to explain the expression in this dispatch; and it is evident that the time which he contemplated Morell taking to do this was this time which I have referred to after McDowell left him, and before he received information from McDowell that he was going to take King away, and for him to remain where he was,

Now, for the purpose of explaining that movement which has been referred to, I want to read from the testimony of General Griffin, at page 162 of the court-martial record, which I think you will see describes precisely the movement that I have been endeavoring to indicate:

1433 I received an order, almost directly after General McDowell had left, to recall my pickets, and orders to move my command to the right. I attempted to go to the right, and moved probably 600 yards, until, with the head of my column, I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I cannot say who, "You can't get through there." We then faced about, and moved back to the hill where the battery I first referred to was stationed. As we were getting to this hill the enemy's batteries opened upon us.

Now, the time at which those batteries opened was after General McDowell had left, and before or about the time that they returned, after Porter had received information that King would be taken off.

As we were getting to this hill the enemy's batteries opened upon us. My brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I cannot say how long. The disposition was certainly one to repel an attack.

Then General Morell describes the same movement on page 146:

After a while I saw General McDowell and General Porter riding together. They passed off to our right into the woods toward the railroad, and after a time General Porter returned, and, I think, alone, and gave me orders to move my command to the right, over the railroad. I started then and got one brigade, and, I think, one battery over the railroad, passing through a clearing (a corn-field), and had got to the edge of the woods on the other side of it when I received orders to return to my former position. I led the men back, and as the head of the column was in front of Hazlitt's battery, which had been put in position, we received a shot from the enemy's artillery directly in front of us. I got the infantry back of the batteries, under cover of the bushes and the crest of the ridge, and posted Waterman's battery on the opposite side of the Gainesville road, and we remained in that position the most of the day.

The return of General Morell's brigade from the right of the railroad back to the left, and in the position which he describes here as supporting Hazlitt's battery, was made after, and in consequence of a message which was sent by General McDowell to General Porter that he should remain where he was, and he would take King with him. In other words, this movement which General Porter contemplated making, and which he has described in the language referred to by the Recorder, was a movement intended to be an attack upon the enemy, and not a movement such as was intended to be described by McDowell over that broken country, which General Porter pronounced a military blunder. When he found that King was being taken away from him, then he gave up the thought of making that attack, because he considered that his own corps was too weak to make it.

Now, in coming to the dispatches, there are some, which seem to me, if I may use the expression, to belong to families, and should be considered together, and it will probably be convenient for you hereafter if you would designate them as such. In the first place, you will find that dispatch to McDowell and King, which was in the old record on page 31.

The PRESIDENT OF THE BOARD. I would like to suggest to the counsel that they arrange all those dispatches in their order, as they understand, and submit them to us in that form.

Mr. BULLITT. I will do that, but I should like very much now, with the permission of the Board, to refer to these dispatches, because from a comparison of the language I think you will see it is very important.

The first one to which I want to call your attention is the dispatch which was offered in evidence upon the former trial, and which you will find upon page 26 of the opening address:

No. 29.

Generals McDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy.
1434 They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?

F. J. PORTER, *Major-General.*

Now on page 810 of the Board's record will be found this dispatch:

General McDOWELL: The firing on my right has so far retired that, as I cannot advance, and have failed to get over to you except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and General Sigel and get nothing.

F. J. PORTER.

That message, as I suppose, is intended as a duplicate practically of the previous one which I read to you. I suppose it is not unusual, where it is deemed doubtful whether a message will reach its destination, to send a message containing similar information by another messenger, supposing that both cannot fail to be delivered. Thus I account for the dispatch addressed to General McDowell in which he says he shall withdraw to Manassas as being a duplicate of the dispatch to McDowell and King, in which he informed them of his purpose to withdraw to Manassas. I presume that these dispatches were sent by two different routes and by two different messengers, so that if one should fail to reach its point of destination the other would not.

Now, as we suppose, and I think we are justified from the circumstances in arguing, these two messages were sent about the time that the firing began in the afternoon on the extreme right in the direction of Sudley. You will recollect that the firing by Benjamin in the neighborhood of Groveton ceased toward one o'clock; so that General Porter from that time until toward three o'clock, not hearing that firing, was under the impression that the firing, practically, was ceasing; and when it began, in the neighborhood of three o'clock, in the direction of Sudley, which would be in the direction also of Bull Run, naturally he might have been, at least, impressed with the idea that the firing was retiring as indicating that General Pope's main army was carrying out the purpose which he had indicated in the joint order to fall back behind Bull Run. It seems to me that these dispatches both mean the same

thing; that they were sent about the same time, and that they were duplicates one of the other, founded upon the fact that he supposed from the firing having recommenced in the neighborhood of Sudley, that in that direction General Pope's army was retiring.

This is explained on page 35 of the statement of General Porter:

On "going to the head of the column," I found I had been misinformed. The opening of an artillery fire beyond Groveton towards Sudley Springs, on General Pope's extreme right, and the cessation, temporarily, of that near Groveton had created an erroneous impression that "the firing of the enemy had advanced and ours retired."

Now, what did General Porter do under that statement that he intended to retreat? The Board will find on looking at page 423 this dispatch addressed to General Morell:

General MORELL: Push over to the aid of Sigel, and strike in his rear. If you reach a road up which King is moving, and he has got ahead of you, let him pass; but see if you cannot give help to Sigel. If you find him retiring, move back toward Manassas, and should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right, as you return.

F. J. PORTER.

As I suppose, that order was sent to General Morell at the time that General Porter had determined to fall back to Manassas; and the direction to him to push over to the aid of Sigel, and strike in his rear, was a movement by way of retiring, but with a direction to Morell that, in doing so, he should aid Sigel if he found that he could. It
1435 is quite evident that the order to General Morell to push over to the aid of Sigel did not mean that he should pass over that broken ground that we have been talking about, because he could not reach Sigel by that ground without making a very circuitous detour. The idea was that he should fall back to the northeast. In other words, it was a direction to do that which he informed General McDowell he intended to do, to retreat or retire.

Mr. CHOATE. Towards the road by which King was moving?

Mr. BULLITT. Yes; if you find him retiring, if you reach the road by which King is moving, and he has got ahead of you, let him pass, and see if you can give any help to Sigel, indicating that at that time the impression was upon his mind that Pope's troops were retiring and therefore he must retire.

Look to the points of the compass for Manassas.

That dispatch, as I allege, must be read in connection with the dispatches or orders or communications sent by General Porter to Generals McDowell and King, indicating his purpose to retire.

Now this, as I allege, occurred about three o'clock, or about the time that the firing indicated that the army of General Pope was retiring.

Now, coming to the following dispatches, the question is put to General Morell:

Q. Can you state the next; or what is your best judgment as to what was the next?—A. I think I received, very soon after that, No. 33. I had no time to act under that order.

That is, he had no time to act under the order directing him to retire, when he received this dispatch:

General MORELL: Hold on, if you can, to your present place. What is passing?

F. J. PORTER.

Thus showing that immediately after General Porter had sent these dispatches to McDowell and King, indicating his purpose to withdraw, just after having sent the order to General Morell, to make this move-

ment which I have indicated as being in fulfillment of the expressed purpose to McDowell and King, General Porter finds that he is mistaken; that the firing which he supposed indicated this withdrawal on the part of Pope's army had led him into an error, and he revokes the order to General Morell, and directs him to hold on if he can to his present place. Then follows dispatch No. 32:

General MORELL: Tell me what is passing quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

F. J. PORTER.

Those orders, it seems to me, must all be read together, for the purpose of understanding what those two dispatches mean, one of which has now been produced for the first time, and the other of which was offered on the former trial.

The next dispatch to which I wish to call attention is one described by Lieutenant Weld, upon the former trial, to have been delivered to General Pope from General Porter. That will be found upon page 129 of the old record.

Q. Were you sent by General Porter, on the 29th of August last, to General Pope?—A. I started about four o'clock in the afternoon of the 29th from the junction of the road that leads from Gainesville to Manassas Junction, and the road that leads to Sudley Springs. I was sent with a message, sent to General Pope, but to be delivered to either General McDowell or General King. I first received a written message, and then General Porter gave me a verbal message to the effect that General Morell would now be strongly engaged; that there was a large force in front of us; that large clouds of dust were seen there, &c. I also glanced over the written message and it was to the same effect, but much more minutely, with details which I do not now remember.

1436 On page 131 the question was put by the Judge-Advocate:

Q. Will you look at this paper (handing witness original of joint note from General Porter to Generals McDowell and King, which is set forth on page 116 of the record)—

That is the joint note to which I have been referring, indicating his purpose to withdraw—

and say whether you recognize it as the one you bore to General McDowell and General King on the occasion you have referred to?—A. (After examining it.) I do not think that is the one. The one I took General Pope put in his vest pocket.

The Recorder has, I presume, unwittingly fallen into the error of supposing that that dispatch which was sent to McDowell and King was the one which was delivered. I think I do not misunderstand what he meant to convey in his argument, and it is quite evident that it was a mistake. This dispatch sent by General Porter to General Pope is to the effect that General Morell would now be strongly engaged; that there was a large force in front of us, and so forth. Now, if you will look at the dispatches on page 424 from General Morell to General Porter, you will see that No. 35 is this:

General PORTER: Colonel Marshall reports a movement in front of his left. I think we had better retire. No infantry in sight, and I am continuing the movement. Stay where you are, to aid me if necessary.

MORELL.

Then General Porter's reply on the same paper, No. 36:

General MORELL: I have all within reach of you. I wish you to give the enemy a good shelling, without wasting ammunition, and push at the same time a party over to see what is going on. We cannot retire while McDowell holds his own.

F. J. P.

Following that is dispatch No. 34, in which Marshall says to General Morell:

The enemy must be in a much larger force than I can see; from the commands of the officers, I should judge a brigade. They are endeavoring to come in on our left, and have been advancing. Have also heard the noise on left, as the movement of artillery. Their advance is quite close.

It seems to me very clear that this message which General Porter sent to General Pope by Lieutenant Weld, which indicated that he would probably be engaged, in its regular order was sent after the two dispatches which had been sent by General Porter, one of them to McDowell and King, and the other to McDowell, indicating a purpose of retreat. That is the order which they unquestionably occupied, as the dispatches themselves show from a proper reading, in the light of the known circumstances of the situation.

Now, following that in regular sequence, come the two dispatches which will be found on page 810 of the record, and which are the new dispatches produced by General McDowell:

General McDOWELL or KING: I have been wandering over the woods and failed to get a communication to you.

Let me call attention to the fact which I omitted to notice, that in that dispatch in which General Porter stated to General McDowell the purpose to withdraw to Manassas, it is very important to observe the note which is at the foot of page 810 in these words:

An artillery duel is going on now; been skirmishing for a long time.

Describing just what was intended to be described by General Morell and General Griffin when they said that the batteries opened upon them after they had gotten back to their position.

It connects, in other words, these two dispatches from General Porter to Generals McDowell and King, and General McDowell indicating his purpose to withdraw; it connects those two dispatches in point
1437 of time immediately with the point at which Morell and Griffin say they returned on to the left side of the railroad. I do not mean to say it was instantaneous. But it was in that connection and it preceded the time at which the message was sent to General Pope when he stated that he expected Morell to be heavily engaged. Now, we come to these two dispatches that have been produced by General McDowell before you; and upon reading those dispatches it must be manifest that they are duplicates of each other:

General McDOWELL or KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER.

General McDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water, and am out of provisions. Have lost a few men from infantry firing.

August 29, 6 p. m.

F. J. PORTER.

If you will look at the words you will see that those two dispatches were intended practically as duplicates, and that as he might have been apprehensive that the first might not reach its destination, he did what I referred to as having been done by him in the other instance, and which, I have been told, is a very ordinary and proper precaution to be taken by military commanders in important communications, never to trust an order to the chances of one messenger, but to send immediately a duplicate of the same substance by another messenger and by a different route.

Now, again, these two dispatches must have been written after the events which are described in the dispatches of General Morell to General Porter, and these communications by Marshall to General Morell; they must have been written after that; they must have been written after the time at which General Porter sent the message over to General Pope by Lieutenant Weld.

Further than that, those two dispatches are undertaking to describe what had been transpiring with General Porter from the time at which General McDowell left him. "I have been wandering over the woods and failed to get a communication to you." What does it mean? It means that he had been trying to get General Morell across that woods to the right when he made that movement, immediately after General McDowell left him, and before he had received the message that General McDowell was going to take King away with him.

Now, is it not manifest that in stating the fact that the artillery "opened upon us" as he was withdrawing Morell, that General Porter in that dispatch is undertaking to describe the precise movement which is described by General Morell and General Griffin as having taken place when they were withdrawn from the right of the railroad and brought back to the left, and the artillery of the enemy opened upon them just about the time that they reached their first position? So that, when you take the language used by General Porter that after wandering about in the woods for a time he withdrew Morell, and while doing so artillery opened upon them, in connection with the movement
1438 that was made and which was described by Morell and Griffin, you will see that these two dispatches mean, so far as that is concerned, to describe to General McDowell precisely what had occurred early in the day, just after General McDowell left—all that occurred just about the time that General McDowell rode back and said he would take King with him—up to that period.

Again, if you will take the words, "From the masses of dust on our left, and from the reports of scouts, think the enemy are moving largely in that way," you will see that that is precisely the language which is used by Marshall and Morell in their communications, that the enemy were attempting to come in on the left, and that he is intending by this dispatch to describe that movement.

Then you will observe that both these dispatches used this language: In the first one, "I wish to know your designs for the night"; and in the second one, "Please let me know your designs; whether you retire or not." Evidently these two dispatches were written, as one of them bears date, at 6 p. m., or about that hour. As the night was then approaching, and as General Porter had not, up to that time, received from General McDowell or from General Pope any account, and had no account, of the actual condition of affairs upon his right, and as he knew that the joint order stated to him that he must hold himself in a position to be able to fall back of Bull Run that night, and that the Army would probably have to do the same, he very properly was endeavoring to get

that information which would enable him to determine what course he himself should pursue with his troops; for it would have been a very improper thing, a very dangerous thing, for him to have remained on Dawkins' Branch if the balance of the Army had withdrawn back of Bull Run. So that, in sending these communications to General McDowell, General Porter was endeavoring to arrive at the then position of the balance of the Army, so that he could determine what his own course should be. It seems to me that the conclusion is absolute that that dispatch of 4.30 p. m. had not reached General Porter at the time that this dispatch of 6. p. m. was dated and sent by him.

I have endeavored thus to explain these dispatches. And it is due to the Board and to this subject to state, that as General Porter had not the dispatches which he had sent to Generals McDowell and King except this one, which indicated a purpose of retiring; that is to say, not the dispatch which was sent by Lieutenant Weld to General Pope, it was always a matter difficult to determine what some of these dispatches meant; because we all know that if you take a single strip out of a carpet you may destroy the whole pattern. Just so, if you take a single dispatch out of a series of dispatches, you may so break the continuity as to render it almost impossible to understand how certain events occurred.

This was always the difficulty; and yet when you take the explanations which I have endeavored to give you and put them side by side with all the declarations, with all the testimony that General Porter has ever given in this case, with all the statements which he ever made, I think you will find that he has been uniform and consistent; and while he could not always recollect the contents of his dispatches, his declarations and conduct have been entirely in keeping with what he declared was the course of events at that time, what he intended to do, and what was done.

1439 ARGUMENT OF ASA BIRD GARDNER, COUNSEL FOR THE UNITED STATES.

Mr. PRESIDENT AND GENTLEMEN OF THE BOARD: After a series of meetings, not equaling, however, the number held by the high military court which tried this petitioner sixteen years ago, the Board will soon exhibit to the reviewing authority, to the future historian, and to the judgment of the country a mass of statements respecting the campaign in Virginia in August, 1862, such as no other campaign, not even that terminating in Waterloo, has ever presented.

While the Revised Statutes of the United States provide for the institution of courts-martial or courts of inquiry to administer justice to those who are in the military service of the nation, and minutely provide for the oaths which have to be taken by the members and judge-advocate or recorder preliminary to any investigation or inquiry, Congress has never provided for any appeal or writ of error from the judgment of a court-martial after it has been finally acted upon by the convening authority. Its decision is final and conclusive when the court which tries the case has jurisdiction over the offense and individual.

In the criminal practice of the circuit and district courts of the United States we find that, in many instances, judgment is final.

The present Lord Chief Justice Cockburne of England, in 1867, in the case of Colonel Nelson and Lieutenant Brand, said, when referring to general courts-martial:

> No one, I think, can deny that the substance of justice is carefully attended to. There is nothing arbitrary, nothing capricious, nothing unsettled. * * * Perhaps there are no tribunals in the world in which justice is administered with a higher sense of the obligation which the exercise of judicial functions imposes, with a higher sense of honor, or a greater desire to do justice.
>
> These, I think, so far as experience has shown, are, generally speaking, the characteristics of the *military* tribunals which exercise their functions under the name of courts-martial.

The eminent jurist who used this language did it after allusion to the fact that the accused, in general courts-martial in the British army, is deprived of, as he terms it—

> The inestimable advantage of having his case advocated by those who are practiced in the science and skill of advocacy, and who know how to bring out everything that can possibly make for the benefit of the client, whereby, in the end, truth is elicited by all that can be said on either side being heard, and the tribunal which has to judge is placed in the most advantageous position for deciding according to right.

In the American Army, the accused is, under the Constitution, always entitled to counsel as of right. This is exemplified in the case of this petitioner, who, on his trial, was defended by able counsel in the persons of the late Hon. Reverdy Johnson and Charles Eames, esq.

The history of the Army shows no instance of a body of commissioned officers assembled by executive order for the purposes which brought this Board together.

Necessarily the Board had to hear counsel for petitioner before determining its method of procedure. That statement, instead of formulating points as to what he desired to do, took the character of an
1440 elaborate argument in detail, with presentation at the same time to each of us of the argument in printed form. From this it appeared that he proposed to introduce:

1st. So-called newly discovered evidence;

2d. Cumulative evidence; and

3d. Evidence as to his conduct on the 30th of August, 1862, in order to show *animus*, which had been ruled out after argument on the original trial. In other words, he substantially proposed a new trial.

He also asked "justice"; alleged he had been wronged, and by another of his counsel declared that he desired the very fullest and most searching examination to be made of the facts of the case, so that the actual truth should be known, and would certainly expect that if it came to the knowledge of the Board in any way that witnesses can be had who are known to have knowledge upon the subject, even if it is inconsistent with the claims that he puts forth, they shall have opportunity to appear, and that all the knowledge that they should have on the subject should be drawn from them, and that the petitioner did not desire his witnesses to give any more *ex parte* statements, but that they should be subjected to the test of cross-examination so that the actual truth should be developed. (Board's Record, pp. 3 and 4.)

The petitioner's counsel also proposed to present the record of the court-martial and read evidence there taken to the Board preliminarily to introduction of what we may term, colloquially, oral evidence.

It also appeared that the names of a number of supposed witnesses, who had written letters, had been sent by the War Department and Army Headquarters either to the President of the Board or myself, who at that time in this case was merely the Recorder of the Board, with such duties as usually pertain to such office and mere regulation boards, where no law prescribes duties such as are prescribed for him on a court of inquiry. These names of witnesses I communicated to counsel.

With this state of facts the Board was called upon to decide what position it should occupy in the proposed action of counsel for petitioner.

Had this Board confined the petitioner's counsel to the presentation of affidavits in the nature of newly discovered evidence, so as to determine:

1st. Whether it was in fact *newly discovered* evidence, and,

2d. Whether, if it had been placed before the general court-martial which tried petitioner, it would have afforded ground for an acquittal, this was all he could, *under the circumstances*, have reasonably expected.

This Board, however, saw very plainly, that if evidence, so called, was to be presented and received by it as to the *merits*, and petitioner's counsel did not desire their witnesses to give any mere *ex parte* statements, some one must cross-examine and present rebutting evidence, if any there was.

This obligation, therefore, having been specifically devolved upon me by this Board on the 26th day of June, 1878, under the designation of "counsel for the government," with the full responsibility thus directly placed on me to cross-examine and to produce rebutting evidence, I have, with no knowledge of the case before that time, endeavored to elicit the truth, and the whole truth, irrespective of persons, so far as want of any judicial authority has permitted.

The representative of the government should never forget that justice

is all that his government desires, but this does not demand of
1441 him a tacit or expressed acquiescence in whatever may be proposed by an accused.

The petitioner has come here with the assistance of three skillful, able, and learned counsel, after sixteen years' careful preparation, admitting also the legal assistance heretofore (by name) of some of the ablest counsel in the land, and that one of his present advisers here had been, when this Board first met, already a year engaged in his cause.

While, therefore, as representative of the government, I have never intentionally kept from petitioner's knowledge any properly admissible evidence which I deemed material to him (an obligation, by the way, which his counsel would not necessarily be under to the government), and while the record shows that I have even called new witnesses for government at his instance without knowing what they could testify to, thus giving him the privilege of cross-examination (Board's Record, p. 328), nevertheless, I have considered and do consider, despite some unthinking criticism, that the government has *some* rights, and that it is my duty to look out for them by the fullest endeavor to ascertain the truth, the Board itself being responsible for its method of procedure.

That obligation which, as I have said, this Board placed upon me I have not sought to avoid, for the reputation of the Army as well as the reputations of this Board as individual officers are concerned, that there shall be no one-sided, partial investigation of this case, if investigation like a retrial is admissible, and that the solemn record of a statutory court of nine duly sworn general officers shall not be reviewed without a previous exhibition of the most complete and conclusive evidence, so convincing that all may understand and acquiesce.

All examinations of a judicial or quasi-judicial nature have to take, for the ascertainment of truth, a well-defined course.

In all courts of criminal jurisdiction of the United States and in all its military tribunals, which are criminal courts of special and limited jurisdiction, the rules of common law in criminal cases, which are the result of matured experience of generations, prevail under the express ruling of the Supreme Court of the United States, except where such rules have been specifically modified by statute.

The proceeding before this Board is in the nature of a criminal case where these rules ought to apply; because, if we take the original record of evidence of petitioner's court-martial, with intent to compare it with other so-called evidence here introduced, certainly that which it is to be compared with must be such only as would be legally admissible on a court-martial in case it had been offered on the trial; for anything presented and received of a different character would have a tendency to impair the conclusion arrived at:

1st. Because it would be impossible to determine what weight had been given to it as against *legal* evidence in the original record; and,

2d. Because it would violate the only legal mode for the ascertainment of truth and satisfaction of public justice in military procedure.

These remarks I make preliminarily to future discussion of some portions of petitioner's evidence, so called.

When I heard and read the elaborate opening statement of petitioner's counsel, I was glad to perceive that it coincided with the opinions and sympathies I had hitherto entertained. With no knowledge of the facts, it seemed to me that the petitioner's case was strong—that injustice had possibly been done him, and I did not hesitate, in a private way, to express my sentiments, sentiments entertained by many others, on precisely the same grounds.

1442 PETITIONER'S UNRELIABLE STATEMENTS:

After I began to study the case under the responsibility put upon me by the Board, several things in that argument or statement attracted my attention, and led me, on further search for the truth, to the reluctant conclusion I felt constrained to express in my opening argument. Those were—

FIRST. A suppression or avoidance of the fact (petitioner's opening statement, pp. 6 and 7) that the extraordinary exertions the petitioner made to embark at Newport News for Aquia Creek by midnight of the 20th of August, 1862, did not arise, as he would have had us believe, from eagerness to join General Pope and come under his command, but were because he had an express order to that effect *direct* from Major-General Halleck, the general-in-chief at Washington, and also a pressing telegram from Major-General McClellan, his then immediate commander to push off, as it was a matter of life or death (G. C. M. Record, p. 233)'.

SECOND. An allegation in his argument that the regiments forming Piatt's brigade of Sturgis' division never reported to petitioner on the 29th of August, 1862, an allegation which the evidence of General Griffin (pp. 164 and 165) and also the testimony of General Sturgis or General Piatt show to have been directly contrary to the fact. This is also apparent from the opening statement (p. 89), in which he shows that this brigade was with him at Warrenton Junction.

THIRD. Another allegation in that deliberate and well-considered argument or statement (page 29), viz, that the petitioner knew Longstreet's separate force was strongly posted in his front and that it did not amount to less than 25,000 men, when in his equally well considered defense before the general court-martial which convicted him (G. C. M. Record, p. 266), he deliberately averred that this separate force, which he then also insisted was in front of him, amounted as he then (January 10, 1863) calculated it, at "from ten to fifteen thousand strong." Thus on his trial he advanced precisely the same line of defense as now, and in order then to make a reasonable excuse, alleged that the enemy before him on the 29th of August, 1862, was, according to his then assumed belief, "from ten to fifteen thousand strong"; but subsequently, in order to get a rehearing or review of his case, and to lead to the conclusion that he was the victim of circumstances, the presence of even 15,000 men before him would not have been sufficient to excuse his conduct, and he adds, for convenience, at least 10,000 more to the enemy, and presents to us the possibility generally offered by the Confederates (as see Longstreet's letter in petitioner's opening argument, p. 51, and his evidence, Board's Record, p. 64, also Beverly Robertson's testimony, Board's Record, p. 178), that if the Union forces had attacked, annihilation or destruction would have been the inevitable result. We know from our own military experience what forces three years later were placed in that category.

FOURTH. The fourth allegation which attracted my notice was one deliberately made by counsel for petitioner after concluding petitioner's opening statement (Board's Record, p. 9), to the effect that during the battle of the 29th of August, 1862, the petitioner did not have any belief whatever that the troops of General Pope were sustaining defeat and retiring from the field, and further that there was no ground for such a belief on petitioner's part or on the part of anybody else. This, it will e perceived, is directly contrary to a different part of the opening

statement of petitioner, where, for another purpose, he introduced
1443 a dispatch he sent that very day to Generals McDowell and King, in which he said that—

* * * as they [the enemy] appear to have driven our forces back, the fire of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. (Petitioner's statement, p. 35, dispatch No. 29.)

If the petitioner never had any belief whatever that General Pope's forces on his right were being driven back and retiring from the field, and if there was no ground for such belief, on his part or on the part of anybody else, or that they were even engaged, why did he actually send such a dispatch, a dispatch, it may be added, which he was proven on the original trial to have sent, and which he was willing to acknowledge for another line of defense before this Board?

If he sent that dispatch knowing it was false, but as an excuse for what he proposed in it to do, he intentionally sent thereby a notice the effect of which would have been to absolutely paralyze any offensive movement which the commanding general might have proposed to make at an auspicious moment, and thus ruin any plan of battle about to be executed, and possibly compel the commanding general, in the midst of success, to stop and order a retrograde movement to prevent being outflanked on his left by the advance of the forces from whose flank petitioner withdrew. If the petitioner did not believe what he said in that dispatch, he committed a great, a stupendous crime, for on those and previous exertions of General Pope depended the safety of the national capital.

The petitioner has stated in the part of his argument where he quotes this dispatch, that, "on going to the head of his column," he found he was misinformed, but he does not anywhere show (nor has he shown at any time in this case) that he notified either Generals Pope, McDowell, or King that he did not intend to carry out the determination expressed in that message.

We now know, and will see in the course of this argument, how he issued other orders and sent other messages of the same tenor, which, if they had come to the notice of the general court which tried him, would possibly have saved us all the trouble of reviewing this case.

FIFTH. The fifth point in petitioner's maturely considered opening statement which attracted my attention was in language as follows (page 57):

And I now repeat (and it is shown in the record) that at no time before dark had I or my officers knowledge of any other than an artillery contest going on, or of any *battle* pending, or that General Pope needed any aid.

On his trial he had called Col. E. G. Marshall, Thirteenth New York Volunteers (now colonel United States Army, retired, then a captain in the Regular Army), who commanded his advance skirmishers, and who said:

I could see General Pope's left and the enemy's right during the greater part of the day, about two miles off, perhaps more, diagonally to our front and to the right. The enemy set up their cheering and appeared to be charging and driving us, *so that not a man of my command but was certain that General Pope's army was being driven from the field.* In the different battles I have been, I have learned that there is no mistaking the enemy's yell when they are successful. It is different from that of our own men. Our men give three successive cheers, and in concert, but theirs is a cheering without any reference to regularity of form, a continual yelling.

Which evidence he also quoted in his defense. (G. C. M. Record, pp. 190, 269.)

The petitioner has since, as we have seen, recalled Colonel Marshall before this Board for additional evidence on other points.

1444 That original evidence of this witness, just quoted, itself absolutely contradicts the petitioner's declaration in his opening statement or argument here. The Board will perceive that this is a little different from the state of affairs as described by the counsel who has last preceded me. The petitioner's troops at the head of his column saw and heard this firing and fighting on the left of General Pope's army, but he, away back to the rear, at junction of the Sudley Springs and Manassas and Gainesville roads, was in a position to hear Kearney's firing upon the right, near Sudley church. Additional thereto, in the opening statement itselt, we find some of the petitioner's own orders or dispatches, which he sent on the 29th of August, from which I quote, viz (dispatch No. 27, p. 94):

To Gen'l MORELL: Push over to the aid of Sigel and strike in his rear. * * * See if you cannot give help to Sigel. If you find him retiring, move back toward Manassas.

If Major-General Sigel's corps of General Pope's army had not then been in action, and the petitioner did not know that it was, or that it needed help, why did he issue this order?

Again (dispatch No. 37, p. 96):

General MORELL: * * * The *battle* works well on our right, and the enemy are said to be retiring up the pike.

Again (dispatch No. 31, p. 95):

General MORELL: * * * All goes well with the other troops.

Again (dispatch No. 38, p. 96):

General MORELL: * * * McDowell says all goes well and we are getting the best of the fight.

From these (from page 94 to 96 of his statement), over his own signature, despite his deliberate statement to the contrary, on page 57, it is apparent that both he and his officers knew there was a battle pending, and that he himself knew, by his order to his senior division commander to push over and help Sigel, that aid *was* needed.

He also knew a battle was impending, from a dispatch General Pope had sent to him that very morning, which was received by petitioner at Bristoe, at 5.30 a. m., August 29, in which General Pope ordered him up and said (see dispatch in petitioner's opening statement, p. 93, and G. C. M. Record, p. 235):

It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

It is apparent, therefore, from the admitted, heretofore proven facts set forth for other purposes by the petitioner in his own opening statement, that during all of that same 29th of August, 1862, both he and others of his command had knowledge of a pending battle, and that General Pope needed aid, despite the emphatic statement the petitioner has made to the contrary.

SIXTH. My attention was further drawn to still another paragraph in petitioner's opening statement (page 38), in which, referring to Friday, 29th August, 1862, he said as follows:

My troops were without food at this time, and so continued throughout the next day, except a small supply of hard-tack which they received that night.

On page 91, however, of that statement he printed a dispatch he

1445 sent to Maj. Gen. A. E. Burnside, at Aquia Creek, dated Bristoe, 28th August, 1862, 9.30 a. m., in which he said:

I feel as if on my way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare. * * *

And on page 92, in another dispatch to Major-General Burnside, dated Bristoe, 6 a. m., 29th August (the very day of the battle), he said:

I shall be out of provisions to-morrow night. Your train of forty wagons [provisions] cannot be found.

Thus, according to his own official reports, made at the time, he had—even without Burnside's forty wagons—enough subsistence for his command, not only for the 29th, but for the 30th, and yet he has stated here, apparently forgetful of these dispatches, that he had no provisions for his command that very 29th of August, when he reported he had.

SEVENTH. Another point in his deliberate opening argument which impressed me was the statement (on page 17) that he—

Became informed (27th August) that the general policy of the campaign was to avoid a general action with the main forces of the enemy till large re-enforcements from the Army of the Potomac should join us.

Nevertheless, he knew that Major-General Banks' corps of General Pope's Army had attacked the enemy at Cedar Mountain on the 9th of August; and in his (petitioner's) opening statement (page 82), in a dispatch he sent on the 24th of August, 2 p. m., to Generals Morell and Sykes, he himself said:

Pope attacked the enemy yesterday near Sulphur Springs, and the latter retreated. He was to *renew* the *attack* to-day, and it is probable *Pope* was *pushing* after him, knowing the river at Rappahannock was not fordable. General Halleck's orders are for us to hold the Rappahannock.

Again, in another dispatch of petitioner—this time to Major-General Burnside (petitioner's opening statement, p. 84)—dated "Advance, 25th August, 1862," petitioner said: "Banks and Sigel are at Sulphur Springs fighting to-day."

Again, in another dispatch, which petitioner has printed (opening statement, p. 87), from General Pope to himself, dated "Headquarters Army of Virginia, Warrenton Junction, 26th August, 1862, 7 a. m.," the latter, after ordering him to move forward as speedily as possible * * * so as to "easily move to the front," said:

I do not see how a *general* engagement can be postponed more than a day or two.

Again, in another dispatch to petitioner from General Pope, printed in the former's same statement (page 88), dated Headquarters Army of Virginia, Warrenton Junction, 27th of August, 1862, 4 a. m., General Pope said he wanted petitioner to march direct to that place as rapidly as possible, and, referring to the enemy, said:

We will probably move to attack him to-morrow in the neighborhood of Gainesville which may bring our line farther back towards Washington; of this I will endeavor to notify you in time. You should get here as early in the day as possible, in order to render assistance should it be needed.

Again, in another dispatch of petitioner to General Burnside, which he prints in his opening statement (page 17), just after saying that the general policy of the campaign was to avoid a general action with the main forces of the enemy, he said: "I send you the last order from General Pope, which indicates the *future* as well as the present;" and in that order (page 18) movements of troops were ordered for "operation against

the enemy," and for petitioner's corps to push forward to "assist the operations on the right wing."

1446 Again, in another dispatch of General Pope to petitioner, which the latter also printed (page 91 of his opening statement), dated Headquarters Army of Virginia, Bristoe Station, 27th of August, 1862, 6.30 p. m., referring to General Hooker's fight at Bristoe, he said:

> The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is.

Again, at 9.30 a. m., petitioner sent a dispatch to General Burnside, dated Bristoe, 28th August, in which he said:

> My command will soon be up and will at once go into position. Hooker drove Ewell some three miles, and Pope says * * * He hopes to get Ewell and push to Manassas to day.

The statement, deliberately made by petitioner, that he became informed from General Pope at Warrenton Junction, on the 27th of August, that the general policy of the campaign was to avoid a general action with the main force of the enemy till large re-enforcements should join from the Army of the Potomac, is a statement made by way of preliminary justification or excuse for petitioner's subsequent conduct in not taking part in the battle of the 29th and his other offense of which he was convicted; but in the light shed by the dispatches and orders he himself has presented for other purposes, it is plain that General Pope was constantly on the offensive instead of the defensive, attacking the enemy on every possible occasion; that the petitioner knew it, and that his (petitioner's) deliberate opening statement as to the general policy being to avoid a general action is contradicted too pointedly in the dispatches just cited to require further illustration.

If, however, General Pope had been attempting to avoid any engagement until the Sixth and Second Corps of the Army of the Potomac joined him, then a treble, an awful responsibility, rests on whoever kept the gallant fighting Sixth Corps from joining General Pope at Centreville, which it did not do until late in the afternoon of the 30th of August, after our forces had been compelled to retire there after two days' battles (whose cannonade could be heard even in Washington), although the road by which it came from Alexandria was good and unobstructed—an easy day's march—and orders for its advance went to the commanding general of the Army of the Potomac on the 26th of August, and one brigade, Taylor's, of the Sixth Corps (Franklin's) was shoved up unsupported to Manassas Junction to meet the Confederate Major-General Jackson as he came in there. Brigadier-General Taylor himself lost his life while gallantly attacking, despite the enemy's superiority of force.

That the petitioner has no grounds whatever for the statement in his opening argument, that the general policy of the campaign was to avoid an action, is further evidenced by still later dispatches of General Pope, cited by him, as, for example, one of General Pope to petitioner, dated near Bull Run, August 29, 1862, 3 a. m. (petitioner's opening statement, p. 93), in which he was told that—

> Kearney and Hooker march to attack the enemy's rear at early dawn * * * . A severe engagement is likely to take place and your presence is necessary.

We know from the charges of which petitioner was convicted that General Pope attacked the enemy at daylight of Friday, the 29th of August, 1862; and petitioner's own opening statement (on pages 26 *et sequitur*) shows that the *offensive* on that day was taken by the national Army.

Even on the 30th of August our forces again resumed the offensive, and petitioner himself says (opening statement, p. 65) that:
1447 "Early in the day [30th August] General Pope suggested plans of attack," thus showing all through General Pope's career with the Army of Virginia that that gallant officer was ever seeking to carry out the general policy of the campaign, "to fight like the devil," as previously ordered by Major-General Halleck, which was in strong and marked contrast to the conduct of the petitioner, who kept his command from becoming engaged until the *immediate* presence of that very commander, on the 30th, compelled him to make an attack. All this is in striking contrast to petitioner's unjustifiable remark that the general policy of General Pope's campaign was not to fight.

As we proceed in the consideration of this case, I shall be under the disagreeable necessity of presenting other instances which may compel the application of the maxim *falsus in uno, falsus in omnibus.*

STATUS OF PETITIONER AND METHOD OF PROCEDURE ADOPTED.

The petitioner in this case asked for "justice," not mercy. The pardoning power is an act of grace, clemency, or amnesty, and may be granted from the mere volition of the Executive, with or without cause; but whether or not it comes from compassion, from a settled policy, or as a mode of celebrating some joyful event, the petitioner, when he says he was unjustly convicted and wronged and wants to be "vindicated," does not appeal to that attribute of the Executive. As to a "review" which he asks for, we have seen Congress recently by law give the President power, specially and solely, to revise Ex-Surgeon-General Wm. A. Hammond's case (which this Board also had in charge), from which flows the necessary legal implication that without such legislative sanction such action would be *coram non judice.*

To take the original record of the court-martial as offered by the petitioner and compare it with other evidence and to report, is to review. Precisely, therefore, what the petitioner may lawfully demand and receive it is apparent he does not ask for.

It is to be regretted that this Board has no judicial or quasi judicial power; that is, power to compel attendance of witnesses, administer an oath, or make any affidavit which may be presented "legal evidence," so that malicious false swearing to a material fact shall be perjury.

It is a great homage paid to justice and law that very few who are ever convicted of criminal offenses will admit guilt, but will declare to the last their innocence and the injustice of their punishment, even when about to suffer the extreme penalty of the law.

That this petitioner has on several occasions, as he asserts, sought by appeals to the Executive to obtain some sort of review or revision, I attach no importance to. It was not granted in the case of Brig. Gen. William Hull, U. S. A., but it has in this case permitted the fabrication of specious, and, in the case of his counsel (the late Reverdy Johnson), libelous pamphlets, which have gone to the files of the War Department, the public libraries and press of the country, and thereby manufactured unsubstantial sentiment.

My appearance in this case, under the ruling of this Board, was the first instance where any duly authorized representative of the government could publicly, and I believe honestly, say, during all these sixteen years of specious pleas, that the court of general officers which tried this petitioner, and convicted him of one of the gravest crimes, was composed

of his personal friends, six of the nine being graduates of the United States Military Academy, and all men who he said on his trial
1448 knew him well, and as to each of whom he twice said, of record, he had no objection.

I have no desire to enter on an extended view of this case, nor have my current official duties and some considerable governmental counsel business in the civil courts during the recess afforded me that complete leisure to prepare such an elaborate argument as the three counsel on the other side present.

Furthermore, I do not deem it necessary. I have sought in this investigation to confine it to exactly what the petitioner did or failed to do under the orders he had.

The specifications and charges of which he was convicted are definite and precise, and the whole matter is really in a small compass, despite the collateral issues which counsel have skillfully presented, as to what this or the other did, or failed to do, so as to withdraw attention from their client and fix it upon somebody else, in order that the petitioner's disobedience, or criminal negligence, or positive willful offense, shall be lost sight of in the vague possibilities surrounding acts or omissions of others.

He comes before this Board, not with the presumption of innocence which attaches to those who plead "not guilty," but under a valid, subsisting, and executed sentence. Such fact, however, should not, and I believe has not, impaired the slightest of his rights, and I believe he has been treated, certainly by me, with courtesy and consideration. He has, however, everything to gain by this or any other rehearing, and nothing to lose.

When his counsel sought here (Board's Record, pp. 22, 23) to introduce:

1st. The very evidence as to his conduct on the 30th of August, in order to show *animus*, which had been, after careful argument by Reverdy Johnson, his counsel, ruled out on the original trial (G. C. M. Record, pp. 118, 133, 252, 280), it being the conduct of a day subsequent to petitioner's alleged offense;

2d. When he undertook to introduce cumulative evidence (p. 259);

3d. When he presented such evidence as General Pope's historical order to the Army of Virginia before petitioner joined him—an order known to petitioner on his trial—not produced there, but introduced here by way of justification or excuse as to *animus* (Board's Record, p. 278);

4th. When he undertook to recall some of his own witnesses who were witnesses on his trial in December, 1862, in order to *add* to and explain portions of their direct examination (Board's Record, pp. 282, 307, 440, 444, 461, 1127); and,

5th. When counsel declared, after referring to the "former trial," that the proceedings before this Board are a "full trial" (p. 293), and cross-examined government witnesses here on evidence given on the trial sixteen years ago (Board's Record, pp. 348, 801, 820), the effect was to make this Board an "appellate" tribunal to pass in judgment on the original court and to give weight to such evidence in its findings, and to make recommendations looking toward the revocation of this sentence on the ground, partially if not wholly, that in the judgment of this Board this special evidence, had it not been ruled out by the general court-martial, would have brought that tribunal to a different verdict.

In my opening argument of October 2d I went quite fully into certain

branches of this case, both as to law and fact, stating, of course, as to the latter, only what I believed to be the real condition of affairs.
1449 The representative of the government, in a case like this, stands in a position that he need only pursue that line of reasoning which he believes to be just, with no obligation to a personal client to do the best that he can for him.

Thus have I approached this case.

Maj. Gen. Fitz-John Porter, of the United States Volunteers, and colonel of the Fifteenth United States Infantry, and brevet brigadier-general of the United States Army, was tried and convicted on two charges:

CHARGES AND SPECIFICATIONS OF WHICH PETITIONER WAS DULY CONVICTED.

FIRST.

Disobedience of orders, in violation of the [old] 9th Article of War, an offense punishable with death or such other punishment, according to the nature of the offense, as a court-martial might inflict.

SECOND.

Violation of the [old] 52d Article of War, in misbehaving himself before the enemy; also an offense punishable with death or such other punishment as shall be ordered by the sentence of a general court-martial.

These Articles of War are now known in the Revised Statutes of the United States respectively as articles 21 and 42.

The specifications of which he was convicted were briefly and substantially as follows, namely:

CHARGE 1ST.—VIOLATION OF THE 9TH ARTICLE OF WAR.

First specification.

That he received, at Warrenton Junction, Va., in the evening of 27th August, 1862, an order from General Pope, dated at 6.30 p. m., from Bristoe Station, announcing a severe fight there between Hooker's division (of Heintzelman's corps) and the enemy (Jackson's forces, Ewell's division), and directing him to *start at one o'clock at night, and come forward with his whole corps, or such part of it as was with him, so as to be at Bristoe Station at daylight the next morning, as it was necessary on all accounts that he should be there by daylight.* That if Morell's division (of accused's own corps) had not joined him (accused) yet at Warrenton, to send word to him to push forward immediately, and to send word to General Banks to hurry forward with his (Banks' corps) at all speed to take accused's place at Warrenton Junction. Further, that he, General Pope, sent an officer with this dispatch to conduct him to the place (Bristoe).

Second specification.

That the accused, being in front of the enemy at Manassas, Va., on the morning of the 29th August, 1862, received from General Pope a joint order, addressed to Generals McDowell and Porter, to move forward with their joint commands toward Gainesville, the accused having received written orders to the same effect an hour and a half before (see both orders hereafter set forth), and communication to be established between the two wings of the army; which order he did then and there disobey.

Third specification.

That the accused, being in front of the enemy during the battle of Manassas, on Friday, the 29th of August, 1862, did receive the following lawful order:

"HEADQUARTERS IN THE FIELD,
"*August 29th*—4.30 p. m.

"Major-General PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and if possible on his rear, keeping your right in communication with General Rey-
1450 nolds. The enemy is masked in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

"JOHN POPE,
"*Major-General Commanding.*"

Which he did disobey, and fail to push forward his forces into action either on the enemy's flank or rear, and did in all other respects fail to obey said order.

CHARGE 2ND.—VIOLATION OF THE 52D ARTICLE OF WAR.

First specification.

That during the battle of Manassas, on Friday, 29th August, 1862, *while within sight of the field and in full hearing of its artillery*, accused received from Major-General Pope the 4.30 order (see above, Spec. No. 3), which he did then and there shamefully disobey, without any attempt to engage the enemy or aid the troops who were already fighting greatly superior numbers and were relying on the flank attack to secure a decisive victory and to capture the enemy's army; a result which must have followed from said flank attack had it been made in compliance with the order which accused so shamefully disobeyed.

Second specification.

That the accused, being with his army corps, on Friday, 29th August, 1862, between Manassas Station and the field of battle then pending between the forces of the United States and those of the rebels, and within sound of its guns and in the presence of the enemy, and knowing that a severe action of great consequence was being fought and that the aid of his corps was greatly needed, did fail all day to bring it on the field, and did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle and without knowing the forces from which he shamefully retreated.

Third specification.

That the accused, being with his army corps near the field of battle of Manassas, on the 29th August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away and fall back with his army and leave to the disasters of a presumed defeat the said army, and did fail, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country.

In my opening argument in rebuttal, on the 2d of October, I discussed quite fully the composition of the court, the legal character of the court, and its jurisdiction over this case. As, however, the petitioner has, on various occasions, and even before this court, stated that he had been "improperly convicted and removed from the United States Army," and as the expression "improperly convicted" may be deemed to apply equally to the composition of the court as to the character of the evidence on which he was convicted, the exact condition of affairs, so far as the court is concerned, cannot be too prominently noticed.

JURISDICTION OF THE GENERAL COURT-MARTIAL.

The court consisted of nine general officers of the Army, appointed by Maj. Gen. Henry W. Halleck, then the General in Chief. On his trial, the then accused, before pleading to the merits, raised the question whether the court should not have been appointed by the President of the United States, under the act of May 29, 1830, for the reason that the officer who preferred the charges on which he was tried was inspector-general of the late Army of Virginia. That officer was Brig. Gen. B. S. Roberts, United States Volunteers, and at the time in the Regular Army. The implication in the point thus raised was, that as General Roberts had held this position by detail on the staff of the army commanded
1451 by Maj. Gen. John Pope, therefore the latter must be assumed to have preferred the charges, or, that they were preferred "by his order." It further appeared on the record that there had been a previous military commission ordered to try the accused, but which was dissolved without action, and relative to which the then accused alleged (G. C. M. Record, p. 9) that "the subject-matter of its investigation was charges preferred against" him "by Maj. Gen. John Pope." In reply the judge-advocate of the court, the Hon. Joseph Holt, said (G. C. M. Record, p. 10), referring to the previous military commission, that "in point of fact no charges were ever preferred" by Major-General Pope; that the commission was dissolved and the general court-martial appointed, as first stated; that there was no reference in the order appointing the court-martial to General Pope at all; and further, that he wished to state distinctly that General Pope was *not the prosecutor in the case*, nor had he preferred the charges, nor did he, the judge-advocate, present them as being preferred by him. As the then accused did not pursue the matter further, the court was cleared for deliberation and very properly overruled the objection.

The general court-martial was appointed upon the 25th of November, 1862. Major-General Pope's connection with the Army of Virginia had terminated on or about the 7th of September. His army had been dissolved and incorporated with other forces, and he himself had, on the 16th of September, assumed command of the geographical Military Department of the Northwest, with his headquarters at Saint Paul, Minn.

The act of 1830, to which I have alluded, had been, it is pertinent to remark, made for a very different purpose than the one to which it was sought to be applied on the trial of this petitioner. It had been enacted for the purpose of preventing a commanding general from preferring charges against a commissioned officer and sending them before a court *of his own appointment* and then *acting upon the proceedings* in the case, as had been done but a short time before by a major-general commanding, who had preferred charges against the then Adjutant-General of the Army, had himself appointed the court and acted upon the proceedings, instead of forwarding the charges to the next higher authority, in order that a court might be appointed from that quarter, and the proceedings acted upon by the superior authority.

It will be perceived that in the case of this petitioner, Major-General Pope was not his commanding general at the time his court was ordered. He had not the slightest military power or authority in any particular over him; he was in a different sphere of duty; he could neither appoint the court for his trial, nor act upon its proceedings, *nor carry the proceedings into execution*. As to Brigadier-General Roberts, he was a general officer, detailed by the War Department for duty as inspector-general

to that Army of Virginia, irrespective of who might be commanding general for the time being of that army. He belonged to the staff of that army, and not to the personal staff, like an aide-de-camp, of the commanding general. He had as much right to prefer charges against any officer in that army, or out of it, as anybody else. Therefore, as the petitioner was not *under the command* of Major-General Pope when the charges were submitted to trial or when the court was appointed, Major-General Pope was not his commanding officer, within the purview or intent of the act of 1830.

If anything further were needed in this case to show General Pope's connection with the charges, it is to be found in his evidence on the court-martial, where he testified, December 5, 1862 (G. C. M. Record, p. 23), that he did not of his own knowledge know who preferred the charges; that he had not preferred the charges against the
1452 accused. He had, however, set forth in his official reports the latter's operations, as he did those of everybody else concerned in the campaign of August, 1862. It is quite needless to say that the making of his official report was but his duty, in order that justice might be done to all concerned. It possibly brought the accused to justice, because General Pope, as a sworn public officer of the government holding a high official position wherein the lives of thousands were within his control, was bound to state everything that he knew or believed bearing upon the events of the campaign which he had conducted, either in praise or censure of whoever might have been connected with that campaign. His reports were one source of information to the government and the public as to the transactions and the acts of commission and omission of the accused. The record shows that there were other sources of such information also.

General Pope's power or ability to bring the accused to justice after he became firmly convinced of his guilt was a power limited solely to the preparation and presentation of official reports; because, as we know from the Court-Martial Record, it was not until he arrived in Washington after the close of the campaign that he became firmly convinced of the criminal conduct of the accused, made evident to him beyond peradventure by the exhibition to him by President Lincoln of the dispatches and communications which the accused had sent to Major-General Burnside, and which that faithful officer had sent to the President (G. C. M. Record, p. 23). His, Pope's, power to act or command had then ceased, as Major-General Porter had resumed his connection with the Army of the Potomac, under a different commander. General Pope could not even order charges to be preferred by any of his staff except his personal staff, because he had no longer a military staff to the Army of Virginia, which was now dissolved. In military practice we know that when a staff officer prefers charges by direction of his commander he does so with the explicit statement, "By order."

I am constrained to enter into this collateral issue somewhat from the manner in which the petitioner has for a series of years, without the slightest warrant, held up Major-General Pope as his "prosecutor," because of General Pope's remarks in his report to the Committee on the Conduct of the War, made January 27, 1863, that he considered it a duty he owed to the country to bring Fitz-John Porter to justice, lest at another time, and with greater opportunities, he might do that which would be still more disastrous; and that with his conviction and punishment ended all official connection that General Pope had since had with anything that related to the operations he conducted in Virginia.

The petitioner knew as well as we know that it was a moral obliga-

tion and a duty on the part of the commanding general, as far as was in his power, to bring to the notice of the government anything that he believed would tend to bring a delinquent officer to justice. The verdict of the general court-martial which tried and convicted this petitioner of these grave crimes shows that General Pope had sufficient probable cause to induce a belief that the petitioner was guilty when he made his reports. This obvious official duty of General Pope should relieve him from any imputation of being animated by personal hostility to the petitioner, for whatever his personal feelings might have been towards the accused, friendly or otherwise, his duty would remain the same. If the accused, or his counsel, on the original trial had desired to know how or why or when Brigadier-General Roberts had come to prefer the charges against him, he could undoubtedly have ascertained when General Roberts was called and sworn as a witness by asking him the question.

1453 COMPOSITION OF THE GENERAL COURT-MARTIAL.

Having thus shown the legality of the general court-martial as a court properly appointed, merely for the purpose of again refuting the many insinuations and implications on behalf of the petitioner which have gone forth for so many years, next to be considered is the composition of the general court-martial.

The petitioner has deliberately asserted here, when referring to the court of nine general officers which tried him, that they "could not sit with that calm necessary for a judicial deliberation"; that his sentence was "undeserved," and that he was "improperly convicted."

In my opening argument I mentioned who those nine general officers were who, with the Hon. Joseph Holt as Judge-Advocate, formed the judicial tribunal under the military laws to administer justice. There had not been a court in the Army of the United States composed of officers of such rank since the close of the Revolutionary war. They sat, not as we are sitting, under the mere oath which we took when we accepted our commissions as officers in the Army years ago, but under the oath which the statute has wisely provided in cases of trials, "to well and truly try and determine, according to the evidence, and to duly administer justice without partiality, favor, or affection." When a court sits thus, it is only the most overwhelming and convincing proof which would justify in the slightest degree any one in saying that the sentence awarded by it was undeserved, or that the court "could not sit with that calm necessary for a judicial deliberation." The officers who tried the accused were, many of them, his intimates, and all his friends. Even when he raised the point as to jurisdiction, he said it was "not with the slightest purpose of taking any exception to any member of the court" (G. C. M. Record, p. 10); and yet two of the members of that court had been active participants with him in the August campaign. Even before he raised the jurisdictional question he declared formally of record that he had no objection to any member of the court (G. C. M. Record, p. 5), thus, on two different occasions, deliberately placing himself on record in this matter. Of the nine general officers, six were graduates of the United States Military Academy, and the President of the court was an intimate personal friend of the accused. The latter, in his defense on his trial, said, in addressing the court (G. C. M. Record, p. 256):

> Yourselves most, if not all of you, have known me well. Your eminent official law adviser [meaning Judge-Advocate-General Holt], who has conducted this prosecution calmly and fairly, so far as on him depended, but with a vigilance which his duty

demanded, himself, in the recent past, when numerous events hinged on the great sway which in his high post he bore, has trusted me, and has felt that his trust was in nowise betrayed.

It is plain from this that the court were his friends, and that the Judge-Advocate-General had respected him and esteemed him, or he would not have trusted him, or would have been prejudiced against him.

To the petitioner's carefully prepared written defense on the merits the Judge-Advocate made no reply whatever, but in alluding to the length of the investigation said (G. C. M. Record, p. 227):

I will simply remark that this case has been thoroughly and most patiently investigated. A continuous session of forty-five days sufficiently attests this.

I know of no instance in the history of the American Army where a general court-martial in the trial of a cause has devoted as many days to it as were given to the case of the petitioner. This fact of itself is sufficient answer to the remark he has made that they "could not sit with that calm necessary for a judicial deliberation." In his ad-
1454 dress here he has asserted that many of his witnesses were actively engaged in the Army and were unattainable. The record, however, of his trial does not show it. On the contrary, he specifically stated that he was ready to go on with his case (G. C. M. Record, p. 118). From then until its close there is nothing whatever to show that he did not have summoned and in attendance every witness he asked for. When all his evidence was in, the court gave him all the time he desired to prepare his written address (G. C. M. Record, p. 225).

Soon after his court had adjourned *sine die*, President Lincoln, over his own hand, by an order dated January 12, 1863, directed Judge-Advocate-General Holt, in his quality as head of the Bureau of Military Justice, and in the usual course in such cases under the law—

To revise the proceedings of the court-martial in the case of Maj. Gen. Fitz-John Porter, and to report fully any legal questions that may have arisen in them, and upon the bearing of the testimony in reference to the charges and specifications against the accused, and upon which he was tried.

We have seen this review which the Judge-Advocate-General made under the law the subject of severe animadversion on the part of the petitioner. In other words, as I have said in my opening argument, the reviewer has been reviewed, and no longer is "the eminent official law adviser" who, through forty-five days of trial, had "conducted the prosecution so calmly and so fairly."

It is a curious fact, among the many unusual defenses which the petitioner has set up here, that he has attempted to show that President Lincoln, who acted upon the proceedings and the findings and sentence of the court, which was that he should be cashiered and forever disqualified from holding any office of profit or trust under the Government of he United States, never read the proceedings at all, but came to his determination of approval from the review made by the Judge-Advocate-General under his order. If this even was true, it is none the less a fact that the sentence is a valid and subsisting and a final and completed act. But it must be borne in mind that while the case was still progressing the record was being printed and published in the newspapers of the day (pp. 653, 655, and 659 Board's Record), and that portion of it which composed merely the record of the prosecution was printed as soon as the prosecution was completed (p. 346, Board's Record). So that when the case finally came into the hands of Mr. Lincoln he was quite thoroughly conversant with all its principal points; and all that he practically would have had to do would have been to examine the questions raised by the accused in his defense, and consider them in connec-

tion with the review. I believe that the court which tried this convicted officer was a court of as honorable and just men as ever have been assembled on any court-martial in the Army of the United States.

I am constrained as the representative of the government to say this on behalf of the members of that court, many of whom I knew personally, because bound by their oaths not to disclose or discover the vote or opinion of any particular member, those who still survive have for sixteen years suffered with dignity and patience language of aspersion and reproach from this petitioner, and in his behalf. Had it been confined simply to a portion of the secular press of the day I should hardly in an argument like this have considered it my duty to notice it. But the petitioner has made himself a party to the slanders and libels by indorsing and making use of the pamphlet published by his senior counsel, the late Reverdy Johnson, shortly after his trial, in July, 1863. The language of that pamphlet (p. 994, Board's Record) in reference to the members of the court-martial was indefensible and unwarranted.

1455 To charge that the general officers who sat upon that court were promoted in rank by President Lincoln, with the consent of the Senate of the United States, on account of and because they had voted for conviction, was a reflection not only on the court, or the members who were referred to, but upon the President and the Senate. It contained an implication that certain members had been false to their oaths and had disclosed or discoverd the votes and opinions of the members of the court. It was an implication that President Lincoln himself was corrupt, that he wanted the conviction of the petitioner, and sought it by corrupting the very fountain of justice.

This pamphlet to which I have referred (page 11) was, on the 10th day of June, 1869, forwarded by the petitioner to President Grant, in an appeal which he then made over his own signature, in which he spoke of the "unparalleled injustice" with which he had been treated. The fact that so bold and malicious an attack on respectable and honorable men who deserved well of their country should thus be made is but one of the indications of a systematic and sustained plan, since the time the court rendered its judgment, to abuse and hold up to contempt all who have been unfortunately, directly or indirectly, concerned in the prosecution and conviction of the petitioner, either as judges, as judge-advocate, as witnesses, or as executive reviewing authority.

We have seen here that instead of confining the evidence to what the petitioner did or did not do on the 27th and 29th of August, under the specific limited charges on which he was tried, it has been sought, directly and indirectly, at one time for one purpose, at another time for another purpose, either to test the recollection of the witnesses by cross-examination, or in order to have a connected narrative, or presumably to discover bias or prejudice or contradiction, to bring in detached portions of the campaign for the purpose of showing inconsistencies or seeming confusion or errors in the campaign as conducted by those who had been witnesses against the accused in his trial or concerned therein, without opportunity for them to defend themselves, or judicial sanction to such proceeding.

CONDITION OF AFFAIRS JUST PRIOR TO THE FIRST CHARGE.

In taking up the charges seriatim of which the petitioner was convicted, a preliminary sketch of military affairs as they then stood in Virginia will be desirable for a correct understanding of the merits.

In the report or rather statement made by General Pope, by request,

to the committee of Congress on the "Conduct of the War" (subsequent to petitioner's conviction, and introduced by the latter before this Board against my objection, and for purposes quite apparent), occur some remarks which will illustrate the subject. Said he (Pope):

When I first assumed command of these forces the troops under Jackson had retired from the Valley of the Shenandoah and were in rapid march toward Richmond, so that at that time there was no force of the enemy of any consequence within a day's march of any of the troops assigned to my command.

It was the wish of the government that I should cover the city of Wahington from any attacks from the city of Richmond, make such dispositions as were necessary to assure the safety of the Valley of the Shenandoah, and at the same time so to operate upon the enemy's lines of communication in the direction of Gordonsville and Charlottesville as to draw off, if possible, a considerable force of the enemy from Richmond, and thus relieve the operations against that city of the Army of the Potomac. The first object I had in view was to concentrate as far as possible all the movable forces under my command.

* * * * * * *

1456 He then refers to the disposition of the troops:

King's division of the same corps it was thought best to leave at Fredericksburg to cover the crossing of the Rappahannock at that point, and to protect the railroad thence to Aquia Creek, and the public buildings which had been erected at the latter place. While I yielded to this wish of the War Department, the wide separation of this division from the main body of the Army, and the ease with which the enemy would be able to interpose between them, engaged my earnest attention, and gave me very serious uneasiness.

While these movements were in progress commenced the series of battles which preceded and attended the retreat of General McClellan from the Chickahominy towards Harrison's Landing. When first General McClellan began to intimate by his dispatches that he designed making this move towards James River, I suggested to the President of the United States the impolicy of such a movement, and the serious consequences which would be likely to result from it, and urged upon him that he should send orders to General McClellan that if he were unable to maintain his position upon the Chickahominy, and were pressed by superior forces of the enemy, to mass his whole force on the north side of that stream, even at the risk of losing much material of war, and endeavor to make his way in the direction of Hanover Court-House; but in no event to retreat with his army farther to the south than the White House on York River. I stated to the President that the retreat to James River was carrying General McClellan away from any re-enforcements that could possibly be sent him within a reasonable time, and was absolutely depriving him of any substantial aid from the forces under my command; that by this movement the whole army of the enemy would be interposed between his army and mine, and that they would then be at liberty to strike in either direction, as they might consider it most advantageous; that this move to James River would leave entirely unprotected, except in so far as the small force under my command was able to protect it, the whole region in front of Washington, and that it would then therefore be impossible to send any of the forces under my command to re-enforce General McClellan without rendering it certain that the enemy, even in the worst case for themselves, would have the privilege and power of exchanging Richmond for Washington City; that to them the loss of Richmond would be trifling, while the loss of Washington to us would be conclusive, or nearly so, in its results upon this war.

I was so deeply impressed with these views that I repeatedly and earnestly urged them upon the President and the Secretary of War.

After General McClellan had taken up his position at Harrison's Landing I addressed to him a letter stating my position and the distribution of the troops under my command, and requesting in all earnestness and good faith to write me fully and freely his views, and to suggest to me any measures which he thought desirable to enable me to co-operate with him or to render any assistance in my power in the operations of the army under his command. I stated to him that I had no object except to assist his operations, and that I would undertake any labor and run any risk for that purpose. I, therefore, desired him to feel no hesitation in communicating freely with me, as he might rest assured that every suggestion that he would make would meet all respect and consideration at my hands, and that so far as it was in my power to do so I would carry out his wishes with all energy and with all the means at my command.

In reply to this communication I received a letter from General McClellan, very general in terms, and proposing nothing towards the accomplishment of the purpose I had suggested to him. It became apparent that considering the situation in which the Army of the Potomac and the Army of Virginia were placed in relation to each

other, and the absolute necessity of harmonious and prompt co-operation between them, some military superior, both of General McClellan and myself, should be called to Washington and placed in command of all the operations in Virginia.

In accordance with these views Major-General Halleck was called to Washington and placed in general command. Many circumstances which it it not necessary here to set forth induced me to express to the President, to the Secretary of War, and to General Halleck my desire to be relieved from the command of the Ar ny of Virginia and to be returned to the western country. My services were, however, considered necessary in the projected campaign, and my wishes were not complied with. I accordingly took the field in Virginia with grave forebodings of the result, but with a determination to carry out the plans of the government with all the energy and with all the ability of which I was master.

On the 29th of July, 1862, he left Washington with the design to cover, as far as possible, the front of Washington, and make secure the Valley of the Shenandoah, and so operate upon the enemy's lines of communication to the west and northwest as to force him to make heavy detachments from his main force at Richmond, and thus enable the
1457 Army of the Potomac, without molestation, to withdraw from its position at Harrison's Landing, and take transports for Aquia Creek or Alexandria.

During these movements the battle of Cedar Creek was fought 9th August.

On the 16th he became apprised by an intercepted dispatch that General R. E. Lee, with the main portion of the Confederate army, intended to overwhelm him before the Army of the Potomac could come to his assistance. The fate of the country depended on his ability to hold his ground until re-enforced by that army, for if the capital had fallen it is highly probable the Confederate Government would have been recognized by foreign powers.

On the 14th August the Confederate Maj. Gen. T. J. Jackson had begun his march from Gordonsville. He had obtained permission from General Lee to make one of his characteristically bold and decisive moves in advance, and on the knowledge of this fact many subsequent events will become plain. The permission was incautiously given; soon, I have reason to believe, repented of. Even General Longstreet himself admits having remonstrated when he heard of it.

The movements of General Pope's army during these trying days are worth studying. Limited, as he was, by orders from Washington, he did all that a courageous and able general could do.

As late as the 20th, he was ordered by the general-in-chief to hold the line of the Rappahannock, and on the 21st "to dispute every inch of ground, and fight like the devil until we can re-enforce you."

Meanwhile Jackson, covered by the Bull Run Mountain Range, was marching rapidly to Salem and Thoroughfare Gap, positively outflanking General Pope, who, confined by his imperative instructions, could do but little. Jackson was now about three days ahead of the main body of the Confederate army.

General Pope's army had been re-enforced from the Army of the Potomac by the Army Corps of Major-General Heintzelman and much of Burnside's Ninth Corps, under Reno, and by the division of Maj. Gen. John F. Reynolds, of Pennsylvania Reserves.

On the 26th August, Jackson marched from White Plains through Thoroughfare Gap, by Haymarket and Gainesville, reached Bristoe Station at sunset, and the same night sent a detachment to seize Manassas Junction.

On the 25th General Pope's headquarters had been at Warrenton, and the 26th they were at Warrenton Junction.

On the morning of the 27th General Pope, having relinquished his

former line of operations, which he had held later than his judgment dictated, under the orders he had, began his movement against Jackson, and on the evening of that day General Hooker's division of Heintzelman's corps having moved along the railroad from Warrenton Junction towards Manassas Junction, and meeting Ewell's divison of Jackson's forces at Bristoe Station in the afternoon, after a sharp fight drove him out in the direction of Manassas Junction. General Pope made his headquarters with this division.

In his rear, at Warrenton Junction, was the petitioner's command, the gallant Fifth Corps of the Army of the Potomac.

General McDowell with his own and Sigel's corps, and Reynolds' division, were at Gainesville, interposed between Jackson and Thoroughfare Gap, while Reno, with his corps and Kearney's division of Heintzelman's corps, was at and near Greenwich, within supporting distance of McDowell. Jackson's main force was concentrated at Manassas Junction—a point, by the way, he would possibly never
1458 have reached if the promised re-enforcements had been sent from Alexandria to that point.

The New Jersey brigade under Brig. Gen. Geo. W. Taylor, of the Sixth Corps (Franklin's), got up to Manassas Junction in season from Alexandria, but unsupported, after a gallant fight were routed and their commander mortally wounded. Had the entire corps been there the subsequent days' battles might not have occurred (Board's Record, pp. 540, 750).

Two courses now remained open for Jackson, seeing that his line of retreat through Gainesville and Haymarket to Thoroughfore Gap was held by McDowell, viz, to retire through Centreville, which would carry him still farther from the main body of General Lee's army, or to mass his force and assault Hooker at Bristoe Station and turn his right.

If this last move should be made, daybreak was the time when it would be most likely to be carried into effect.

At this juncture General Hooker reported his ammunition nearly exhausted, and that he had but about five rounds per man left.

We now come to the charges in this case.

FIRST SPECIFICATION, FIRST CHARGE, CONSIDERED.

The petitioner was convicted of this specification, that he had received at Warrenton Junction, Virginia, on the evening of August 27, 1862, an order from General Pope, dated 6.30 p. m., from Bristoe Station, announcing a severe fight there between Hooker's division of Heintzelman's corps and the enemy (Jackson's forces, Ewell's division), and directing him to start at one o'clock at night and come forward with his whole corps, or such part of it as was with him, so as to be at Bristoe Station at daylight next morning, *as it was necessary on all accounts that he should be there* by daylight, and that if Morell's division of his corps had not joined him at Warrenton to send word to him to push forward immediately, and to send word to General Banks to hurry forward with his (Banks') corps at all speed to take the place of the accused at Warrenton, and that General Pope had sent an officer with his peremptory dispatch to the petitioner at Warrenton Junction.

Did Major-General Porter do what he was distinctly and explicitly ordered to do by Major-General Pope, namely, march with his corps at one a. m. of August 27th from Warrenton Junction? Or did he arrive at Bristoe Station at daylight as commanded? The answer is that he *neither started nor attempted to start at one a. m., nor did he arrive at day*

light at the point to which he was ordered. The court convicted him of that offense, and he has not produced before this Board a single particle of "newly-discovered evidence," or even a new excuse, as the Board will perceive by reference to the record of his court.

On his trial he claimed that the roads were blocked with wagons, that the night was dark, that his troops were fatigued, that he made great personal exertions *after* the march began, *after daylight*, to clear the road. It further appeared that Major-General Pope sent messages to him to expedite his movements (accused's defense, G. C. M. Record, p. 256). It is no answer to such a charge in military law to enter upon a collateral issue by way of justification or excuse in order to ascertain whether there was any real necessity for a punctual compliance with the exact terms of such an order, or even whether it could be fully complied with. On the commanding general of the Union Army of Virginia, who issued the order, rested the responsibility of the operations with which he was charged by his government, in the face of an
1459 active and enterprising enemy flushed with success, it having recently relieved Richmond from danger, and having put the gallant Army of the Potomac for the time being on the defensive, in a position at Harrison's Landing, where it could not prevent the Confederates from entering on offensive operations. When Major-General Pope issued a peremptory order and indicated a certain time when its execution should be commenced, the petitioner had no right whatever to set his will up in opposition, and to say that he would not start until a later hour.

The cumulative evidence presented here has exhibited some curious facts, and careful examination will possibly show that they leave the petitioner's case worse than before.

It appears that under this order, instead of arriving at daylight as directed, the petitioner did not arrive himself until between 10 and 11 o'clock in the morning at Bristoe Station. In examining the language of the order it would seem to be quite impossible to put it in terms more precise or imperative. It was dated late in the afternoon, and it shows on its face that it contemplated the possibility that Major-General Morell's division of the Fifth Corps, then under the petitioner's command, had not yet arrived at Warrenton Junction. That the petitioner should be informed of the state of affairs, the order with unusual minuteness placed before him the circumstances as they were then seen by the commanding general. The order positively directed that he should leave Warrenton Junction at a precise time—no discretion was allowed; and the commanding general, in order that there should be no mistake as to the execution of it, sent an officer of his own staff to conduct the accused to Bristoe, so that he should have the benefit not only of that officer's knowledge of the road, but also the *direct, immediate influence and authority of the commanding general himself in doing anything that might be necessary to further the objects of the order.* As a reason why he should start at one o'clock in the morning this strong language is used: "It is *necessary on all accounts* that you should be here by daylight."

There is no question that the order was a lawful order. General Pope, in his examination before the court-martial, explained the reasons for the urgency of the order (G. C. M. Record, p. 12). Captain De Kay, Fourteenth United States Infantry, who carried the order, swore, on the original trial, that he delivered it between nine and nine-thirty p. m. (G. C. M. Record, p. 43).

The assistant adjutant-general of the accused, Lieut. Col. Frederick

T. Locke, said the order was received at very nearly ten o'clock p. m. (G. C. M. Record, p. 134).

The petitioner had two divisions in his corps—the Fifth Army Corps—then under his command, viz, Maj. Gen. George W. Morell's and Brig. Gen. George Sykes'.

Maj. Gen. George W. Morell, on the trial in 1862 (G. C. M. Record, p. 143) said, when called for the accused, as to the time of his arrival at Warrenton Junction:

> I arrived there myself about the middle of the afternoon. I think my command—the last of it—did not arrive there until near sunset.

And before this Board he has said that most of his divisions were there before dark (Board's Record, p. 430).

As to Sykes' division, Capt. Drake De Kay, who had been in Warrenton Junction early in the day of the 27th, testified on accused's trial, 8th December, 1862 (G. C. M. Record, p. 44), that the regulars of Sykes' division were in camp there as early as ten a. m., because he visited several officers of his own regiment in camp there.

1460 Brig. Gen. George Sykes, United States Volunteers (now colonel Twentieth United States Infantry), says before this Board that he thinks his command got into Warrenton Junction about one p. m. 27th August (Board's Record, p. 445). Therefore, as the petitioner in his opening statement before this Board has stated (p. 22) as one of his excuses for disobeying Major-General Pope's order, that General Sykes, when discussing it with him at the time, represented his men, "after a long fatiguing march extending into night, as in no condition to renew the march without some interval of rest," it is sufficient to refer to Sykes' sworn statement as to the time his division arrived in Warrenton Junction—confirmed as it is by other evidence—in order to lead to the conclusion that the latter never said anything of the sort.

Now, what did this petitioner do when he got the order? Did he direct his assistant adjutant-general, who has been so much and so often a witness in this case, to send out a detachment to clear the roads, or to stop any wagons passing through Warrenton Junction towards Bristoe?

Captain De Kay, at the time (G. C. M. Record, p. 43), told him of the condition of the road—that it was good—that there were a good many wagons on it, but that he had passed the last wagon a little beyond Catlett's Station moving slowly.

Thus was he apprised of what was necessary in order to perform the required duty; but, handing the order to one of his generals, he remarked, "Gentlemen, there is something for you to sleep on" (G. C. M. Record, p. 43).

This precise expression remains uncontradicted, and even the petitioner's witness on his trial, Brigadier-General Butterfield, the only one he seems to have cared to interrogate on the subject, said that petitioner remarked "there was a chance for a short nap, or something of that sort, I do not remember the exact words" (G. C. M. Record, p. 185).

Captain De Kay then spoke up and told him—

> That the last thing General Pope said to me [him] on leaving Bristoe Station, was that I [he] should remain with General Porter and guide the column to Bristoe Station, leaving at one o'clock, and that General Pope expected him certainly to be there by daylight, or relied upon his being there by daylight.

The petitioner, however, determined not to start until daylight (G. C. M. Record, p. 44), and Captain De Kay had nothing to do but wait and accept the hospitalities of corps headquarters.

Thus did the petitioner set up his will against the lawful order of his commanding general—orders he had sworn to obey in accepting his

commission—and a jury of his peers convicted him of the crime after a patient and laborious investigation of forty-five days.

It will always be impossible to know the exact thoughts which influenced this petitioner in his manifold acts of omission and commission during the few eventful days he was under Major-General Pope's immediate command. We can gather them only from his words and acts.

The order being an urgent as well as an imperative one, why did he not send word to General Pope of his determination not to move. His delay might possibly ruin any movement or combination contemplated by his commanding general. Did he hope for this, or was he merely using every means to interpose delays, so that his late commanding general should reach the front from Alexandria and assume command of the whole?

To say that the veteran division of regulars under Brigadier-General Sykes would have straggled or become disordered and disintegrated in the nine-mile march to Bristoe, is to assume a want of discipline and *esprit de corps* in that splendid division which few who ever knew
1461 it will concede. To say that it was fatigued and not able to march is contradicted by pointing to the hour at which it arrived in Warrenton Junction.

According to petitioner's own witnesses, General Sykes' division had been in camp nearly fourteen hours, from 12.30 p. m. of the 27th August, before it would have had to move at all under General Pope's order, and if the government evidence is to be relied on, given as it was when the recollection was vivid, the division had been quietly in camp fifteen hours.

It is further to be remembered that General Pope's order contemplated only the march at 1 a. m. of Sykes' division, leaving Morell to follow, as he did not know whether the latter had yet arrived at Warrenton Junction or not.

However, even Morell's entire division, according to petitioner's own witnesses, had been in camp at least six hours, from 7 p. m., before any march was required.

No pretense can be raised that the petitioner here did not fully know the intent and effect of the order, for one of his witnesses on his trial, Brig. Gen. *Daniel Butterfield* (G. C. M. Record, p. 185) said that the accused, at the time, stated—

> Rather decidedly, there was the order; it must be obeyed. That those who gave the order knew whether the necessities of the case would warrant the exertions that had to be made to comply with it.

Did he make the exertions to comply with it?

The whole allegation of disobedience of orders in this specification finds the true principle of obedience enunciated by the petitioner at the time he made that remark.

So necessary did the commanding general seem to think it was that the petitioner's troops should be speedily at Bristoe, that, as was shown on the original trial, he sent messengers to him *en route*, and even vouchsafed as late as 6.05 o'clock on the morning of the 28th to inform petitioner that General Hooker reported his ammunition exhausted, and requested him to come forward at once with all possible speed (Board's Record, p. 1126).

Fortunately for the nation General Jackson did not know the condition General Hooker's division was in, and made a night march with his whole command—infantry, cavalry, and artillery—via Manassas Junction to Centreville and stone house, on the very night petitioner pleads that it was too dark for him to move Sykes' regulars.

General Pope need not have given any reason whatever why he desired petitioner to march at 1 a. m. or why he desired him to be at Bristoe at daylight. His courtesy was thrown away, but the fact that he did go fully into his reasons for issuing the order took from the petitioner any *possible opportunity for exercising any discretion whatever as to literal compliance.*

There is not a word in the whole order which shows that General Pope left him any discretion as to the *end* to be obtained, viz, "On all accounts to be in Bristoe at daylight."

Anxious hours they must have been to the commanding general from daylight until all certainty of Jackson's attacking had passed away.

However, as the commanding general was not bound to give any explanation of his order, none is needed in considering whether the petitioner obeyed or disobeyed it.

Those were perilous and critical times for the government, requiring great and unusual exertions on the part of that army, and so far
1462 as the field and line and rank and file were concerned, there can be no question that they were actuated by a desire to do their whole duty.

The petitioner here took counsel with some of his general officers what should be done as to General Pope's order, although he had no power to call a council of war in order to transfer responsibility.

As to what the petitioner actually did, reference to the testimony of some of the witnesses will afford some indication.

If there were wagons on the road between Warrenton Junction and Bristoe, it is plain that the first simple duty of a commanding officer who had to make a night march would be to get control of the road by sending a detachment in advance and parking such wagons on each side as might be found in the way.

The Board will recollect the evidence of Brevet Brigadier-General Taylor, First Pennsylvania Cavalry, who had been encamped in that country for some weeks, and been over it a number of times, in which he described what an immense plain it was, with roads, as we see in their evidence, running parallel to each other for operations on both sides of the track; it was all open country at that time, with very little, if any, woods, and those in but detached pieces (Board's Record, p. 910).

Now, what were the exertions of the petitioner after he got the order between 9 and 10 p. m. to move precisely at 1 a. m.? It seems he stepped out from the light of his tent to look around, and concluded it was dark, and then decided to postpone marching until 3 a. m. instead of 1 (G. C. M. Record, p. 185).

The same witness to this fact says he sent two aides to investigate the condition of the road and to ask General Pope to have the road cleared so that they could come up.

In this there must be error, or more would have been produced on the subject; but as the petitioner's aides actually remained with him, as appears by their evidence, they evidently did not do anything of the sort.

However, if such messengers were sent to General Pope, it appears explicitly by the witness's evidence that they were sent before the petitioner decided to postpone the marching until 3 a. m., which the witness also had recommended. Therefore, assuming it true that the request was sent to General Pope, it would have led him to believe that the petitioner proposed to start at the time he himself had ordered.

If the petitioner did actually send any one to General Pope during

that night, requesting the road cleared, it would show that he *knew what he should do before marching at his end of the line.*

When Lieut. Col. *Joseph P. Brinton*, of the Second Pennsylvania Cavalry, went (G. C. M. Record, p. 205), at ten o'clock at night, from Catlett's Station to Warrenton Junction, on this very road that petitioner was to march over, and saw the latter at midnight, the petitioner then asked him if he would not send out some men, when he got back, to have the road cleared. Colonel Brinton says that he sent some men to get the wagons out of the way, but didn't know the result.

This, it will be observed, was after midnight. Already had the petitioner, for upwards of two hours, the order in his possession.

Major-General *Morell* says he himself received no orders from petitioner to send any of his command to clear the road to Bristoe (Board's Record, p. 430).

Had any been sent from General Sykes' division it would undoubtedly have been shown, but it has not been.

Capt. *Francis S. Earle*, General Morell's assistant adjutant-general, (Board's Record, p. 414), knew of no orders being given the night
1463 before, or any effort made to clear the road from Warrenton Junction to Bristoe Station.

Lieut. *Stephen M. Weld*, petitioner's aide-de-camp, has stated before this Board on his behalf that *after* daylight he found the road completely blocked from Warrenton Junction for the first three miles.

General *Sykes*, however, and other of his witnesses, testified on the court-martial, in December, 1862, that his division, which led the column, ran upon this train of wagons within two miles of camp (G. C. M. Record, p. 177). He says that they halted for fully an hour on the Bristoe side of the stream, two miles from Bristoe, and arrived at that place at 10.30 o'clock. His division was then thrown into position a little in advance of that place.

Maj. *G. K. Warren*, Corps of Engineers, then Colonel Fifth New York Volunteers, commanding a brigade of Sykes' division, called by petitioner, says (Board's Record, p. 31) they arrived at Bristoe between 8 and 9 a. m., 28th August. He further says as follows (Board's Record, p. 30):

> I think we were under arms at about 3 a. m. We stood there waiting to get our place in column until daylight. Never left our camp until it was light enough to see. * * * Saw wagons all over the plain, but we were enabled, at the time we marched, to avoid them. I don't remember now of being impeded by any of the wagons after we got daylight.

Petitioner's chief of staff, Lieut. Col. *Frederick T. Locke*, says (Board's Record, p. 296):

> Q. How far did you get along before there was any relief from cavalry sent forward by General Pope to your aid?—A. My recollection is that we had got out into open ground, and were not far from Bristoe.
>
> Q. Catlett Station, I think you said before?—A. I think that is the name of the place.
>
> Q. Before the arrival of that regiment did you have any cavalry that were available to clear the road?—A. No, sir. We had three or four orderlies.
>
> Q. Did you accompany General Porter and ride up with him to General Pope on arrival?—A. I did.
>
> Q. What happened then?—A. We rode up to where General Pope was sitting on his horse, I think on the slope of a hill nearly opposite Bristoe Station. General Porter rode up and accosted him, and told him the difficulties we had met on the march, and asked that measures be taken in order that the trains might be parked so that his column could come through; that the cavalry had only just reported that had been sent to him, for which he had applied. I was immediately sent back with authority from General Pope to have this cavalry close up the trains and park them as rapidly as possible, which I did.

The cavalry here referred to was probably the First Maine, left at Catlett's Station, according to this witness's evidence on the court-martial (G. C. M. Record, p. 136), though he did not then say that General Pope sent them.

This witness's recollection, however, is shown in his evidence in this behalf to be faulty, for Capt. *George Montieth*, petitioner's aide-de-camp, and called by him on the trial 2d December, 1862, said (G. C. M. Record, p. 126):

Q. (By Accused.) What efforts were actually made, and how long were you in removing the wagons, if you removed them at all?—A. * * * We were also assisted by *some cavalry sent with us.* I think there were some half dozen mounted men. After General Porter sent us with the cavalrymen, he also sent Lieutenant-Colonel Locke with either a company or squadron of cavalry to labor in the same way.

That is, from the other end of the line.

This cavalry, it will be perceived, was that which the petitioner temporarily had under Lieut. Col. Jacob S. Buchanan, Third Indiana Cavalry, at Warrenton Junction.

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The fact that Lieutenant-Colonel Locke has a mistaken recollection on this interesting point will become of serious import in discussing later his recollection on other serious points.

As the column tardily approached Bristoe over the plains of Manassas, despite General Pope's urgent messages, "stumps" make their appearance in the road near that place, which shows that the column must have advanced on different parallel army roads over those extensive plains, as the main road had been is use probably a century.

As to when they arrived, Col. *Charles A. Johnston*, Fifteenth New York Volunteers, Martindale's brigade, Morell's division, a witness for petitioner, says, substantially (Board's Record, p. 84), his regiment did not leave Warrenton Junction until 6 a. m., and reached Bristoe at about 3 p. m. Was under arms at 2 a. m.; but as the roads were blocked with wagons, did not leave until 6.

This shows the character of petitioner's efforts to join General Pope, for a guard across the roads at Warrenton Junction would have compelled the wagons to take to the fields in order to get along.

His recollection, however, it will be perceived, is very different from General Warren's.

Maj. *George Hyland, jr.*, Thirteenth New York Volunteers, Martindale's brigade, Morell's division, called by petitioner (Board's Record, p. 114), says his regiment camped "that evening, I think, at Bristoe," 28th August.

Bvt. Brig. Gen. *Chauncey McKeever*, assistant adjutant-general United States Army, a witness for petitioner, and formerly chief of staff, Heintzelman's corps, has testified, on cross-examination, as follows (Board's Record, p. 151):

Q. If a peremptory order had been received at Warrenton Junction to move from that place to Bristoe at 1 a. m. on the night of the 27th and 28th of August, is it your opinion, as a military man, that the troops at Warrenton could have been put in motion on the road to Bristoe in order to comply with such a command?—A. They could have been put in motion, I presume. I know nothing to prevent their being put in motion.

Q. Do you recollect about what time it was daylight on the 28th of August?—A. I should think about four o'clock; maybe a little later—not much.

Just here it is well to observe that while the petitioner thought it was too dark to move at one o'clock, he fixed the time for leaving at two hours later, when it would still be dark; in fact, at a time when, as we know, just before day, it is always the darkest.

Lieut. Col. *Robert Thompson*, One hundred and fifteenth Pennsylvania Volunteers, a witness for petitioner, said there were "stumps in the road,"

in one part, and then, on cross-examination, testified as follows (Board's Record, p. 239):

Q. Suppose part of your troops had several hours' rest on the day of the 27th, and you had received a peremptory order to march at one o'clock, with such troops as you could, with your command from Warrenton Junction to Bristoe, could you have done it that day?—A. If I could I would. I would have *tried* it.

Capt. *B. B. Fifield*, commissary of subsistence, called by the Accused on the trial in 1862 (G. C. M. Record, p. 123), said that the wagons stretched along for three or four miles. He found them on the way from Warrenton Junction to Bristoe, between Warrenton and Kettle Run; that there was a jam between Warrenton Junction and Kettle Run; but when questioned by the court he stated the case as follows:

1435 Examination by the COURT:

Q. With one hundred efficient men, commencing at 10 o'clock that night, do you think you could have cleared the wagon-road so as to have rendered it passable for troops?—A. If I could have had command of the wagon-road and of sufficient force when the wagon-trains commenced their movement, I think I could have kept them from a jam.

Col. *Robert E. Clary*, called by the Accused in 1862, answered, on cross-examination, as follows (G. C. M. Record, p. 121):

Q. In your opinion, could or could not General Porter, after the receipt of his order to move, which receipt was at 9.30 p. m. on the 27th of August, have cleared the road entirely of wagons by one or two o'clock that night, so that his march would not have been much impeded?—A. I think the troops could have passed over during the night had a sufficient force been sent in advance to have cleared that road of those obstructions, which, at the time I passed over it, extended only three miles, I think. When I passed over the road it was between two and three o'clock in the morning. What the obstructions had been previous to that time I am unable to say.

Q. Will you state whether at one o'clock the character of the night and the state of the road was such as, in your judgment, to render practicable the march of General Porter's troops to Bristoe Station, to arrive at or about daylight?—A. Not without the preliminary steps which I have previously stated ought to have been taken.

Q. Were or were not the first three or four miles of the road from Warrenton unobstructed?—A. They were, as I passed over them.

It will be remembered that the Accused's witnesses corroborated exactly what Captain De Kay, the government witness, said as to the character of the road at that time of night, between Warrenton Junction and the run, for the first two or three miles; and also what General Sykes, a witness for the Accused, stated to be the case next morning.

It is a curious fact that one of petitioner's then aide-de-camps, Lieut. George Monteith, was on the route from Warrenton Junction to Catlett's Station—this very road—having left the former place half an hour before sunset (G. C. M. Record, p. 126), and found some wagons stopped, and others moving along; but when he got back, although undoubtedly becoming aware of the order which Porter had received, he made no report as to the wagons. He had been ordered to find a road to Greenwich, where, under previous orders, Porter's corps was destined. Yet he did not consider it of sufficient importance to allude to the fact of wagons being on the road. The fact is it was too common a thing, and did not impress itself upon his mind as an insuperable obstacle to any movement. Next morning Porter sent him and Lieutenant Weld, with but about half a dozen cavalrymen, to clear the road of wagons, although he then had quite a strong detachment at his headquarters of cavalry. This was between 4 and 5 a. m.—*after* daylight—when he must have known that the wagoners were on the move again. Of course those that were in park during the night by the side of the road, after daylight, taking an hour to feed, and so forth, being, as is seen, several miles beyond Warrenton, began to pull out into the road and move in

the same direction as petitioner's troops. Of course, when his advance came up with them, he found the road quite full.

Lieutenant-Colonel *Locke*, assistant adjutant-general, already referred to, who was a witness for the Accused in 1862 as well as before this Board on this subject, then swore that petitioner had a report of the condition of the road from Warrenton Junction to Bristoe at *about* 8 *p. m.* (G. C. M. Record, p. 139); that petitioner made great personal exertions to clear the way *after daylight*, and that his staff assisted, and that at Catlett's Station he got a detachment of the First Maine Regiment as-
1466 signed to him (G. C. M. Record, p. 131). This witness stated what was undoubtedly the more prudent course in answer to the following question by the court:

Q. Upon a report of bad roads, would it be a reason for commencing the march before or after the time fixed in the order, if the time ought to be varied from at all?—A. If the time were to be varied from, it would be better to have it prior to the time fixed than after.

Corporal *Solomon Thomas*, Eighteenth Massachusetts Volunteers, Martindale's brigade, Morell's division, called for the government, corroborates Col. Charles A. Johnston and Major Hyland, petitioner's witnesses, as to the late hour Martindale's brigade arrived, though he puts the arrival of his own regiment at about 2 p. m. 28th August (Board's Record, p. 844); but, like General Warren, can recollect no obstacles to their march until near Bristoe, where they turned into a road where there were "stumps" (page 843, Board's Record).

It is not necessary to discuss a collateral issue, such, for example, as to whether there was any necessity, real or fancied, for the issuance of General Pope's order to the petitioner, because, as has just been remarked, he was not bound to give any reason for it.

However, departing in this instance from the straight path of argument as to what the petitioner did or failed to do under the specific charges of which he was convicted, it seems proper, in consequence of the unprecedented assault made by him on his former commanding general, to say, collaterally, that General Pope, on the original trial, explained to the court some of the reasons for the urgency of the order (G. C. M. Record, p. 12).

Petitioner, with an assumption of knowledge as to what was transpiring at Bristoe on the afternoon of the 27th, which was necessary in order to justify his departure from his orders, says that General Pope did not know that General Hooker's division was out of ammunition until an hour after he sent petitioner his orders at 6.30 p. m.

Not only did General Pope swear that he did know it (G. C. M. Record, p. 12), but General Heintzelman, General Hooker's corps commander, also has sworn (G. C. M. Record, p. 80) that he himself made known that fact to General Pope late in the afternoon of the 27th of August, so that General Pope had that information both from General Hooker and General Heintzelman.

Bvt. Maj. *Willard Bullard*, Seventy-fourth New York Volunteers, second brigade, Hooker's division, has said before this Board (Board's Record, p. 732) that, on the afternoon of the 27th of August, his regiment had pretty well exhausted its ammunition.

Lieut. *Charles Dwight*, A. D. C., says on this subject as follows (Board's Record, p. 722):

Q. Where were you on the evening of August 27, 1862?—A. I was on the field where the skirmish with the rear brigade occurred, at Bristoe Station, in Hooker's division, Excelsior brigade.

Q. When that action was over what was the condition of your command as to ammunition?—A. We were short of ammunition. I was sent by Colonel Taylor to

General Hooker to ascertain what we should do in case we were attacked during the night, as there seemed to be some doubt as to whether it was a rear guard or whether there would be an attack made. General Hooker replied to me, nearly as I can recollect, "Tell Colonel Taylor that we have no ammunition, but that there has been communication had with General Pope, and General Pope has communicated to General Porter, and General Porter should be here now; he will be here in the morning certainly."

Q. What direction did you receive in case you were attacked?—A. To do the best we could and depend upon our bayonets.

1467 The fact that when petitioner got to Bristoe Station the occasion for his presence had passed, had nothing to do with the question whether he had obeyed or disobeyed his orders.

Lieut. Col. Frederick Myer, chief quartermaster to Major-General McDowell's corps, was ordered just before dark by General Pope, in consequence of General Hooker's action ahead of him, to put all the trains in park.

He testified that he did so, "and gave directions to all the quartermasters to go into park," and that "the head of the train commenced moving just at daylight"; that the roads between Warrenton Junction and Bristoe were in "excellent condition at that time" (G. C. M. Record, p. 108). On cross-examination he said, "the trains were not unharnessed, but ready to move at a moment's notice." The head of the train was about a mile and a half from where General Hooker had his battle, and the wagons were coming into park nearly all night.

From this evidence it will be perceived that the time fixed for the petitioner's march to Bristoe was *just the time when the road would be least obstructed, and with the most ordinary and customary precautions, such as have been indicated, the petitioner could have obtained complete control of not only the road, but the fields on each side, if necessary.*

It is also to be noted that only precisely the same points are raised now as were presented to the court.

With reference to the exertions which the petitioner knew at the time he could have made to have prevented the slightest obstruction to his march, the testimony of Lieutenant-Colonel Buchanan is important. This gentleman, unexpectedly called for the government so far as he was concerned, and leaving his professional engagements in the courts with reluctance, came here and testified as follows:

Q. Have you any recollection of any movement of General Porter's Corps from Warrenton Junction toward Bristoe on the morning of the 28th?—A. If I have got the dates right, General Porter was there on the morning of the 29th. I was there when General Porter left in the morning of the day he started for Bristoe; my recollection is that it was on the morning of the 29th.

Q. What conversation had you with General Porter before he started off to Bristoe Station?—A. On the evening before he started somebody gave me an order to be in readiness to move at three o'clock in the morning. I was in front of General Porter's headquarters at three o'clock in the morning, but I saw no one until after the break of day. Then some one came to me and told me to let the men get their breakfasts and let the horses be fed; that was done, and I immediately went back to the place I occupied. Some time afterward, after sunrise, I saw General Porter. I wanted to go back to Fredericksburg to my regiment. I only had about ninety men with me, and I expected to go back the day before. I rode out with him in the woods, where he was in camp, until we got into an open field; he asked me to send a detachment of the command I had forward to clear the road toward Bristoe Station two or three miles; this was done. I waited some little time and the infantry began to move. About that time he handed me a letter, and directed me to give it to General Burnside, and told me I could go. I started toward Fredericksburg; he sent an aide after me and brought me back, and told me he was apprehensive that I might be captured. He told me to say to General Burnside—I cannot get his language—but the idea was that there was no disaster that was very threatening as yet, and he hoped for the best.

* * * * * * *

Q. You did not accompany any of your detachment toward Bristoe?—A. No, sir; I believe I waited until four or five of the men came back.

Q. When did you get this order from General Porter to send a detachment down there?—A. After I got out of the open woods into the field.

Q. What time of day would you say it was, having reference to daybreak?—A. The sun was probably an hour high.

Q. What troops were there with General Porter at that time?—A. I don't know. When I first went there General Pope was there; General Pope had left, and General Heintzelman commanded there. I do not think I saw any other general officer that I knew except those two.

1468 Q. Do you know whether General Heintzelman's corps was there at that time?—A. I do not. I was camped in front of General Porter's headquarters, that is, toward the road. I came up probably a hundred and fifty yards, and a little to his left; and the troops were generally, I think, over south, and farther on toward Manassas. I did not move about any while I was there—but very little. I staid with my command. I was expecting every hour to get permission to return to my regiment at Fredericksburg. As to the roads, as we went up, I think, on Monday night, I feel pretty well satisfied that there was a little rain; but there was no mud that I recollect of. As we went back it was dry. I recollect the next night I was sent by General Burnside up over part of the road that I had gone down to see what there was up there, and I recollect that night as being very dusty.

Q. You say you were in front of General Porter; at what time?—A. Three o'clock in the morning I had got the order.

Q. Do you recollect anything moving along to the road?—A. No, sir; when I went there it was very quiet. I saw no light in his headquarters at all. I did not know whether he was there or not.

Q. During that night do you recollect whether there were troops or wagons or artillery moving?—A. I did not hear any. I slept but little; we had no tents, and I slept in blankets.

Q. Between three o'clock in the morning, the time you were in position in front of General Porter's headquarters, to the time the troops began to move, as you have stated, have you any recollection as to any forces or wagons or artillery passing down on the road toward Bristoe?—A. No, sir; not until after we went out in the open field, if my memory serves me correctly; very soon after we were there the infantry began to move, but they may have been moving before that and I not know it.

Cross-examination by Mr. BULLITT:

Q. When you say the infantry began to move at that time, you only mean to say that it is the first time you saw them moving?—A. Yes, sir.

Q. Might they not have been moving for an hour or two before and you not know it?—A. Yes, sir.

Q. Two or three hours before?—A. Yes; might have been moving all night if they were not near enough to me for me to hear it.

* * * * * * *

Q. Did you see the head of the column?—A. No, sir. We went right back of General Porter's headquarters, out of the woods, on the road toward Bristoe Station; when I got out into the open field, probably a hundred yards, General Porter halted, and there is where he directed me to send a detachment to clear the road.

Q. How long were the cavalry gone?—A. They caught up with me—I don't know how far—after I was on the road home.

Q. Did General Porter, when he gave you the direction to clear the road, leave you and go on?—A. No, sir; he remained with me.

Q. About how long?—A. Not very long.

Q. According to your present recollection.—A. I cannot tell you.

Q. An hour?—A. O, no, sir.

Q. Half an hour?—A. Well, yes; it may have been longer; it may have been shorter.

Q. You say the sun, you think, was about an hour high at that time?—A. Yes, sir.

Q. Did you see any of General Porter's troops moving at that time?—A. I did not see any troops moving until after I had got out into the open field, until the detachment had been forwarded to clear the road, and then I saw the infantry moving.

* * * * * * *

Q. But you saw nothing to indicate a movement until about that time. What time was it when you first heard these indications of life?—A. The day had broken—the sun was not up—pretty near after daybreak.

Q. How long after that before you saw General Porter?—A. I did not see him until after sunrise.

1469 Q. How did you come to see him then?—A. He was on his horse.

Q. How did you happen to see him?—A. I was directed to report back in the same position after the horses were fed and the men had their breakfasts, so I went back and halted in front of headquarters.

Q. That was after the men had their breakfasts?—A. Yes; after sunrise.

Q. How long after?—A. I cannot tell; it was not very long after sunrise. It may have been half an hour, maybe an hour. It is a good while ago.

Q. Did General Porter say anything to you about the fact that he was in want of cavalry?—A. Yes, sir.

Q. Did he say to you that he wanted to detain you there?—A. Yes, sir.

Q. Why did he not detain you?—A. He did detain me two days, using my men for orderlies.

Q. How did he come to let you go?—A. I don't know.

Q. How many men did he use for the purpose of orderlies?—A. Petty hard to tell; sometimes more, sometimes less.

* * * * * * *

Q. Where was your cavaly in camp?—A. About 125 or 150 yards nearly in front of General Porter's headquarters.

Q. Were they all there?—A. When they were not out acting as messengers.

Q. They were there during these three nights and two days of which you speak, except when they were out on duty?—A. O, yes.

It will be perceived that Colonel Buchanan has placed the departure of the petitioner a day later than the fact, but at the same time he attempted to make it plain that he was not positive as to the dates, because he repeated during his evidence the remark, indicative of doubt whether he was "correct as to dates." The substance of his evidence shows that he was with the petitioner when the latter received from General Pope the orders to move at 1 a. m., for he himself was required by petitioner to get his detachment under arms in front of petitioner's tent at 3 a. m. He saw the troops move towards Bristoe *after* daylight and then gave a small detachment, by petitioner's personal orders, to clear the road towards Bristoe. He was probably detained as long as he was at Warrenton Junction in consequence of petitioner's desire for cavalry which he had expressed to General Burnside in a dispatch two days before (*vide* accused's Exhibit A, G. C. M. Record, p. 228), in which he said, "I want cavalry to remain with me for a few days."

When a witness states a fact as having positively occurred on a particular date, it places his evidence under a different form of inspection from that of the witness who states facts as having occurred on or about a particular time, and does not pretend to be precise as to dates.

That Colonel Buchanan's detachment was at Warrenton Junction at daylight on the 28th of August, 1862, is apparent from Captain Montieth's evidence just given. The orders to him of the petitioner show that the latter knew perfectly what was necessary in order to comply with General Pope's order.

CHARACTER OF THE NIGHT—FORCES MARCHING.

In comparing the evidence of witnesses on this point considerable discrepancy is observed, which is to be expected after the lapse of sixteen years, and the only way to determine what the night really was as to darkness is by ascertaining what was actually done by persons during the night.

1470 During the day's actions to which our attention is directed I recollect having been sent up the Shenandoah Valley from near Harper's Ferry to Winchester, on special service, in command of my own company and of three hundred men of another regiment; but although the duty involved possible contact with the enemy, and my responsibility was considerable, I find I cannot say without reference to my papers whether I made that movement on the 29th or 30th of August, 1862, or whether there was a moon at night or clouds, although I was up nearly all of two nights, at that time, from anxiety for the safety of my command in the position I was placed in.

Probably the description by some of the witnesses that the night of

the 27th August, 1862, was a "dark starlight night" will explain it This is what Capt. William W. Macy, Nineteenth Indiana Volunteers, Gibbon's brigade, King's division, McDowell's corps, terms it. This witness (for government) says his regiment was on the march most of the day from Sulphur Springs until 10 or 10½ p. m. (Board's Record, p. 583); that the night "was most too dark to march pleasantly. We marched (says he) some nights that were a good deal darker than it was that night. We were on the march, but, of course, it is unpleasant marching after night." He further remarked that the regiment kept its ranks (p. 584) and that the roads were dusty, and then referred to obstructions as follows:

I think that the wagon-trains and artillery had the road a good part of the time, and we had the side of the road off through the fields.

Q. Did you find any difficulty in marching through the fields up to 10 o'clock at night?—A. No, sir; not that I recollect.

Private *William E. Murray*, Company C, Nineteenth Indiana Volunteers, Gibbon's brigade, King's division, McDowell's corps (for government), who kept a diary and noted the time by his watch, corroborates this last named witness in the facts noted, and says they marched up to 10 p. m.; that he did not lie down until midnight; and was in line at 4 a. m. There were peculiar circumstances of a dramatic nature narrated by him, which indelibly impressed that night on his memory.

The next evening (28th August) he was wounded in King's action with Jackson on the Warrenton pike, and was carried to Manassas Junction—to the Weir house. There he recorded in his diary for the 29th August, 1862 (p. 589): "News from the field communicates very hard fighting all day; heavy cannonading."

Private *Samuel G. Hill*, of the same company and regiment as the last witness (government witness), says the night of the 27th was a clear night, as he and some of his companions were out foraging for poultry and cooking their suppers until 3 a. m. (Board's Record, p. 592). He was badly wounded the next evening.

Capt. *William M. Campbell*, Company I, same regiment as the last witness, corroborates the other witnesses for government from that regiment by other incidents which fixed the character of the night in his recollection (Board's Record, p. 594).

Private *J. H. Stein*, of Company C, of the same regiment, while corroborating the others (p. 597), remarked that from eight to eleven it was not so light as afterwards. He was badly wounded the next evening, 28th August. This statement of Mr. Stein is in harmony with the statements of some others, as, for example, Brig. Gen. *Gilman Marston*, then colonel Second New Hampshire Volunteers (government witness), whose

1471 recollection is that the night, at the place where he was, some miles distant, was from 9 to 10 o'clock misty and rainy and quite dark. Afterwards he thinks it was not rainy (Board's Record, p. 860).

Bvt. Brig. Gen. *Rufus R. Dawes*, colonel Sixth Wisconsin (then its major), Gibbon's brigade, King's division, McDowell's corps, says that on the 27th they marched to a camp near Buckland's Mills, and got there after dark, and marched again before daylight (Board's Record, p. 835).

Bvt. Brig. Gen. *Thos. F McCoy*, colonel commanding One hundred and seventh Pennsylvania Volunteers, Duryea's brigade, Ricketts' division, McDowell's corps, kept a diary and noted time from his watch, and says his regiment marched all night on the 27th until 1 a. m. of the 28th, and he then understood, as his regiment had the rear, that all of

the division also marched during the same time (Board's Record, p. 640).

Bvt. Maj. Gen. *Wm. Birney*, commanding Fifty-seventh Pennsylvania Volunteers, Kearney's division, Heintzelman's corps, says that his regiment marched that night (27th August), some time before daybreak, in the direction of Bristoe Station (Board's Record, p. 680); that they arrived there at a very early hour, an hour after daybreak, and that he was in the rear of the column as his brigade (Kearney's division) had gone before he marched, and his movement was then impeded by other troops for whom he waited until they passed (p. 683). He thought it was a dark night.

Brig. Gen. *I. H. Duvall*, United States Volunteers, then major First West Virginia Volunteers, Ricketts' division, McDowell's corps, has given some interesting testimony as to the road he took for a portion of the way, on the night of the 27th August, which was the identical road petitioner was required by Major-General Pope's orders to march upon from Warrenton Junction to Bristoe Station via Catlett's Station. His statement as to that road shows what petitioner might have done had he *loyally* undertaken to comply with his orders.

Brigadier-General *Duvall* testified as follows (Board's Record, pp. 860 and 862):

A. On the evening of August 27 I was with my brigade; we were about four miles, I think, northwest of Warrenton at that time, north or northwest, and I was directed by my colonel to carry a letter that he handed to me from General Ricketts to General Pope.

Q. To what point?—A. It was supposed to be somewhere near Centreville; that was my order.

Q. What did you then do?—A. I started and made the trip and delivered the letter.

Q. You left the camp about what time?—A. Nearly dark; it was after sundown.

Q. What road did you take?—A. I came back to Warrenton, and I followed then the road running from Warrenton in the direction of Catlett Station. I was directed to go that way and keep out of the way of the enemy.

Q. Did you pass through Warrenton Junction?—A. No, sir; I struck the road at Catlett's.

Q. What direction did you then take?—A. I took the road leading from Catlett Station to Manassas Junction, by the way of Bristoe.

Q. Where did you find General Pope?—A. I found General Pope near Manassas Junction.

Q. What was the character of that night?—A. I don't know that I recollect distinctly in regard to that; I rode all night, though, until about three o'clock in the morning, when I took a little rest; I had no particular difficulty in finding the way.

Q. From Catlett Station to Bristoe did you meet with any obstructions to your movements?—A. There were a great many wagons along the line; there were
1472 some troops, but I went along without any particular obstruction. There were no obstacles that kept me from going.

* * * * * * *

Q. In your movements on the night of the 27th and morning of the 28th from Warrenton to Catlett Station and Bristoe, did you find these wagons that you speak of an obstruction to the movement of troops?—A. I had no troops. I was on horseback; I rode along and occasionally I would have to ride around some wagons in the road; but I kept going; I didn't stop for them.

Q. What was your opinion as to whether troops could have been moved, a column or a brigade for example, from Catlett Station to Bristoe on that road that you went over at that time?

* * * * * * *

A. I think troops could have marched; there were places where they could not have marched in regular order; they would have had to go around wagons in some way, but there would have been no difficulty in discovering the road; troops could not have marched in regular order of marching; they could have, broken file, perhaps.

Lieut. *E. P. Brooks*, acting adjutant Sixth Wisconsin Volunteers, with a detachment of sixteen cavalrymen from the Sixth New York Volunteer Cavalry, that same night carried orders from Major-General Pope

to Major-General Reno and Maj.-Gen. Phil. Kearney, received, respectively, at 12.20 a. m. and 1 a. m.

The petitioner has seen fit to criticise these orders and introduced one, against objection, on cross-examination, in order to make "comparisons" (Board's Record, p. 1025).

A discussion of these mere *collateral* questions will be avoided in this argument for the government as much as is consistent with reasonable regard for the rights of others, not parties plaintiff or defendant, but whose reputations are assailed with no opportunity to them to defend themselves.

The record of the trial in 1862 shows that the character of the night, obstacles on the road, and efforts to remove them, were very fully inquired into.

The character of the night of the 27th August, 1862, was passed upon by the court.

The petitioner did not march his troops during that night—this is a fact which is too thoroughly fixed to require argument—while numerous other troops did march. Indeed, it is safe to say that it is a single instance where orders to march that night in both armies at any time that night were not complied with.

During the whole four and a half years of the war of the rebellion, the national troops, when occasion required them to march, permitted no such plea as darkness in an August night to interfere with the movement.

History is full of illustrations of immense difficulties surmounted by armies and corps in the effort to comply with orders.

Several recur, but whoever hears or reads this argument will be able to give illustrations for themselves.

During the "Wilderness" campaign, under General Grant, the Army of the Potomac surmounted difficulties in comparison to which the pleas in the way of excuse by the petitioner appear puerile.

JACKSON'S COMMAND MOVING NIGHT 27TH AUGUST.

On this same night in August when the petitioner would not march, Maj.-Gen. T. J. Jackson, commanding the Confederate forces then operating against Major-General Pope, was marching his entire army, some from near Bristoe and the remainder from Manassas Junction to Centreville or stone house, on the Gainesville and Centreville turnpike.

1473 On this subject Major *Henry Kyd Douglas*, of his staff, government witness, testified as follows (Board's Record, page 707):

Q. Were you at Manassas Junction during that month before this time?—A. I was at Manassas Junction on the 27th.

Q. At what time did you leave there; or rather, at what time did the entire command of General Jackson leave there?—A. After dark some time, when the troops had been supplied with as many stores as they could well carry—you know there were a quantity of them captured there—they were marched off along through the night. With some of them it may have been between midnight and morning before the last of them got away. The leading division of A. P. Hill's was Taliaferro's. I don't know whether he went up by Dawkins' Branch or whether he went up this way [Manassas Junction to Groveton]. Ewell went on the Manassas and Sudley road up toward Sudley Church. A. P. Hill went to Centreville. Lawton went up toward the Warrenton, Alexandria and Washington road.

Q. Then all of General Jackson's command were moved in the night-time from Manassas Junction up to that line between Centreville and Groveton?—A. Yes; some of them may have started out before night, and those that were there moved away from Centreville on the night of the 27th.

Jubal A. Early, a government witness, who was a Confederate brigalier-general during this campaign in Ewell's division of Jackson's com-

mand, says (Board's Record, p. 852) that Jackson's forces marched the night of the 27th and that his brigade "covered the withdrawal." He further testified as follows:

Q Did you experience any difficulty in marching that night?—A. O, no; that was an open country there; it was very familiar to us; we had been there the year before.

This evidence is but confirmatory of the Confederate reports which have been submitted here on the subject and which I read from in my opening argument. (Board's Rec., pp. 519 to 540.)

Thus it is apparent that during the night the 27th August, 1862, very nearly all the contending forces operating in the vicinity of the Bull Run battle-fields were in motion to take up new positions.

The evidence of Lieutenant-Colonel Buchanan has afforded the opportunity to contrast the movements that night of the commanding general of the Army of Virginia and the subordinate corps commander, who had but that 27th August come under his orders.

The former at the front is with Hooker when he makes his gallant little fight against Ewell, and, loyally desirous to carry out the wishes of the General-in-Chief and President "to fight like the devil," and to open the road then barred to the National Capital, spends much of this night in writing dispatches and making combinations to destroy the over-confident enemy, who had pushed three days ahead of his supports.

The latter, the petitioner, receiving a peremptory and imperative order to march at 1 a. m., tells his sympathetic division and brigade commanders that it is something for them to sleep on, and proceeds to follow his own advice, for, says Colonel Buchanan, "the first indication of life that I saw about the headquarters was some one came to me after break of day and directed me to have the men get their breakfasts" (Board's Record, p. 608). He had been patiently sitting on his horse with his cavalry detachment in front of petitioner's quarters from 3 a. m. until daylight and never saw the petitioner until "after sunrise."

Meanwhile, the commanding general of the army, sanguine of his ability to overwhelm Jackson if loyally and understandingly supported, and anxious to deliver an effective blow in the cause of his country; waits, and waits in vain, for the presence of petitioner's corps—the finest body of troops in his command—a portion of which did not reach camp until late in the day.

1474 One curious circumstance is to be noted in connection with the petitioner's excuses as to the enormous number of wagons on Manassas Plains between Warrenton Junction and Bristoe, that a detachment started with ambulances from Bristoe on the same road to Warrenton on the morning of the 28th.

The testimony on this subject by Capt. James Haddow, Thirty-sixth Ohio Volunteers, confirmed as it was in essential particulars by that of Lieut. A. F. Tiffany and Private N. P. Beach (Board's Rec., pp. 874, 877, 878), is as follows:

Q. Where were you at sunset on the 27th of August, 1862—about that time?—A. We were on the road between Catlett Station and Bristoe.

Q. Did you after that go toward Catlett Station; if so, at what time and under what circumstances?—A. We marched that night to Bristoe, arriving at Bristoe Station after dark some time; we remained there that night; on the following morning the regiment went on in the direction of Manassas; the company of which I was a member was detached and put in charge of a major of the medical department to go back in the direction of Warrenton with ambulances and obtain medical supplies; we returned to somewhere near Warrenton, passing Catlett Station at some distance on the morning of the 28th; we returned to Bristoe on the evening of the 28th.

Q. At what time did you set out from Bristoe Station to go in the direction of Catlett Station?—A. I could not give the hour, but pretty early in the morning—as soon as we got up and got breakfast.

Q. Did you during that day see General Porter's corps?—A. We met troops (it was a frequent habit to ask soldiers what troops they were), and they said they were General Porter's troops. Porter's troops lay at Warrenton Junction on the afternoon of the 27th when we left there.

Q. What difficulty, if any, did you experience on the morning of the 28th in taking this ambulance train from Bristoe Station to Catlett Station?—A. I don't think we had any material difficulty in getting through; we must have had at least three ambulances; we passed through trains and passed troops; we must undoubtedly have made a march that day of 16 miles; we could not have met with serious obstructions.

Q. Do you know what troops you met?—A. They said they were General Porter's; we inquired frequently; of course I was not acquainted with General Porter's corps; we had just reached the East from the West, and all troops were strange to me.

That the order to petitioner to march at 1 a. m. was urgent and imperative in its terms is beyond question. That it was disobeyed is clearly proved. The petitioner proffers excuses for this disobedience, and by this proffer admits the disobedience, giving his reasons for noncompliance with the terms of the order. These excuses are presented by him as coming under four heads:

First. Darkness of the night.

Second. Obstructions on the road.

Third. The fatigue of his troops.

Fourth. The counsel of his subordinate generals.

1. The plea of darkness is conclusively answered by the fact, fully proved, that bodies of troops, both of our own army and of the enemy, were marching on that very night, both north and east of petitioner, and at no such distance from him as could have made any difference in the character of the night.

2. If the road was obstructed, this was a reason for the greater promptness in beginning his march promptly and for urging it forward. If he had no cavalry to clear the road, it was also the more imperative to start early. This was but a reason for sending a detachment of infantry forward in advance of the time at which he was ordered to march, in order to give notice of his coming and to explore the roads and clear the way as far as possible. It was no reason for foregoing such preparations or for deferring *the time* to begin his march.

1475 But the obstructions were sure to be less than at any hours of the twenty-four if his march began at one o'clock. By that hour most, if not all, of the wagons would be likely to be parked or halted for the night. The time to which he adjourned his march was the very time at which they would again be taking the road.

3. The fact that he was ordered to march with one division of his troops only, if the others were not up, shows that no discretion was left him such as he claims, because of the late arrival and fatigue of his rearmost division. It was a plain implication that one division would be very nearly behind or immediately following.

The divisions were in no way detached from each other. The corps was marching as a whole, yet his commanding general orders him to march with one division, even if the other had not arrived. How much interval of rest for the leading division did these terms allow? Plainly no discretion in this respect was allowed. The requirement of the order was absolute.

4. What was the counsel of his generals? Their own evidence, as given in 1862, though cited at his instance and as his witnesses, paints the line of proceeding he adopted in this council of his officers in too condemnatory colors to be obliterated or lost sight of by any ingenuity before this Board.

He did not utter or make known to them anything but the single fact that he was directed to march at one o'clock. He named the hour and

invited their counsel, but said nothing of the urgency, and he encouraged them to the counsel he wished by adding to his mention of the hour the sneering or indifferent remark, "There is something for you to sleep on." He handed the order to one the of his generals with whom he was most intimate with this remark; and the result was that the one who received it, if he looked at it at all, glanced at it so slightly that he remained unacquainted with its terms.

General Sykes said (p. 176, G. C. M. Rec.):

General Porter informed me that he had received an order * * * directing his corps to march at one o'clock.

(P. 178):

Question by the Judge-Advocate. Do you remember whether you were made acquainted with the urgent language of the order stating that by all means General Porter must be at Bristoe Station by daylight the next morning?—A. No, sir; I did not; for I am satisfied that if the urgency had been made known to us we would have moved at the hour prescribed.

General Sykes subsequently attempted to modify this opinion so far as to claim a certain discretion on the part of a corps commander; but I am content to let this, the opinion which as a soldier he gave at once when the matter was first clearly presented to him, answer.

General Butterfield said (p. 185):

Question by the accused. Will you state what was said by General Porter in relation to that order and what the order was?—A. The order, I believe, was for General Porter to move his forces at 1 o'clock in the morning to Bristoe.

(P. 187):

Question by the Judge-Advocate. Did you see the order, the 27th, from General Pope, or know anything about the urgency of its terms?—A. I did not read it.

General Morell says, in answer to the question as to "what occurred":

(P. 145):

General Porter said to us that he had received this order to march at one o'clock
that night; we immediately spoke of the condition of our troops—they being
1476 much fatigued, and the darkness of the night, and said that we did not be-
lieve we could make any better progress attempting to start at that hour than had we waited until daylight. After some little conversation General Porter said, "Well, we will start at three o'clock—get ready." I immediately left his tent, &c.

Such was this council of generals, and such the way that petitioner directed its counsels on this *first* occasion in which he was called on to act in support of the general under whose unwelcome command he had newly come.

When the pleas of the night being too dark, troops fatigued, and the road obstructed with stumps by way of excuse were gravely advanced here as insuperable obstacles to any movement whatever, the history of the regular American Army suggested a striking example as applicable to this case.

On the 2d January, 1777, General Washington found himself in Trenton, N. J., with the Delaware behind him impassable from the ice and the enemy in full force before him under Lieut. Gen. Earl Cornwallis, and separated from him only by the narrow Assunpink Creek. The question of the existence of this nation as an independent republic hung upon the events of that night. The night before, two of his brigades, under General Washington's order, had made a night march through mud, snow, and water, over rough roads, to join him, and that day were in action. Ill-clad and suffering, the whole army was on this 2d January called upon for another night march, and proceeding around the left

flank of Cornwallis' forces by a wood road filled with stumps from two to five inches high, they approached towards morning the town of Princeton, were in action that day also, and marched until between ten and eleven o'clock that night to Somerset Court-House.

The darkness of those nights, the roughness of the roads, the severe inclemency of the weather, or the want of shoes and proper clothing, did not deter those patriots who were loyal to the orders of their general from making a night march; and the nation was saved.

The first specification to the first charge has now been considered.

It is particularly significant, as showing the first in a series of disobediences to orders all having one object, disloyalty to the orders of the commanding general, and a determination to do nothing until the commanding general of the Army of the Potomac should arrive from Alexandria and assume command under the sixty-second article of war.

Comparisons are never agreeable, and for Major-General Pope to have been hailed as the saviour of the national capital would probably never have met the petitioner's preferences.

General Washington early laid down the rule of obedience to orders, as understood in the British army, from whence came the American articles of war and customs of the service. Said he:

> It is not for every officer to know the principles upon which every order is issued and to judge how they may or may not be dispensed with or suspended, but their duty is to carry them into execution with the utmost punctuality and exactness. They are to consider that military movements are like the working of a clock, and they will go quickly, regularly, and easily if every officer does his duty; but without it be as easily disordered, because neglect from any one, like the stopping of a wheel, disorders the whole.
>
> The general, therefore, expects that every officer will duly consider the importance of the observation, their own reputation, and the duty they owe to their country. He claims it of them and earnestly calls upon them to do it. (General Orders, Army Headquarters, Toamensing, Penn., October 10, 1777.)

When one of petitioner's general officers, who advised him not to march at 1 a. m., said in the original trial that "the movement would not have been impracticable, but * * * would have been a false
1477 military movement" (G. C. M. Record, p. 179), he made an unfortunate commentary upon the language of Washington, which requires no remark.

The rule thus enunciated by the great patriot was well known in both armies.

Mr. *Samuel*, in his "Historical Account of the British Army and of the Law Military" (London edition, 1816, page 285), in discussing the British article of war, which is identical with the American, as to "disobedience of orders," first adverted to mere neglects, which in that service, as in our own, are chargeable only as conduct "to the prejudice of good order and military discipline," and then proceeded to discuss and define the meaning of the article under which the petitioner in this case was tried on the first charge. Said he:

> In the *second*, the absolute resistance of, or refusal of obedience to, a present and urgent command, conveyed either orally or in writing, by the non-compliance with which some immediate act necessary to be done might be impeded or defeated, as high an offense is discoverable as can well be contemplated by a military mind; inasmuch as the principle which it holds out would, if encouraged, or not suppressed by some heavy penalty, forbid or preclude a reliance on the execution of any military measure.
>
> It is this *positive* disobedience, therefore, evincing a refractory spirit in the inferior, an active opposition to the commands of a superior, against which it must be supposed that the severe penalty of the article is principally directed. This highly criminal disobedience may arise either out of the refusal of the officer or soldier to act as

he is ordered—to march, for instance, whither he is bidden—or to persist in any act or purpose which he is prohibited by a direct command from pursuing; for it would in many circumstances, which may easily be imagined, be as dangerous to persist in a forbidden course, as to decline or recede from one that is commanded.

Whether the orders of the superior enjoin an active or a passive conduct, the officer or soldier subject to them is equally obliged to obey. Otherwise, every military operation or enterprise would be made to depend, not on the prudence or counsel of the commander, but the will or caprice of the soldiery, either for the furtherance or obstruction of its object.

Prompt, ready, unhesitating obedience in soldiers, to those who are set over them, is so necessary to the military state, and to the success of every military achievement, that it would be pernicious to have it understood that military disobedience, in any instance, may go unquestioned.

It is not to be overlooked, notwithstanding the construction or modification which the *disobedience*, contemplated in the article, may appear to be capable of—and which favorable sense is often put on the severe terms of its letter by the lenient sentences pronounced by courts-martial on cases of a *negative* character, or of minor consequence—that the fifth article, in fact, makes no distinction between one act of disobedience or another. And that when any is to be made, it must always depend on the view which a court-martial may take of the circumstances submitted to it, with their contemplation of the spirit of the article, or the mutiny act; and that wherever it is made, it will be, not in relaxation of the principle of implicit obedience inculcated by the article, but in the exercise of a discretion, lawfully resident in the court, to mitigate, according to circumstances, the rigor and severity of the law.

Except in the solitary instance where the illegality of an order is glaringly apparent on the face of it, a military subordinate is compelled to a complete and undeviating obedience to the very letter of the command received. The most important consequences may often rest on the precise mechanical execution of an order which in appearance to the military inferior may have a substantive and a sole object in its view, while in the design of the commander it may be combined with a vast and various machinery, and a deviation from it, even with the best intentions and the best success, separately considered, might defeat the grand end of the meditated enterprise. Hence it is scarcely possible to imagine a case when a subordinate officer would be at liberty to depart from the positive command of his superior. The justice of the Roman father who put his brave and successful son to death for disobedience to his commands, has never been called in question; though many have wished that the feelings of the father had softened, in that particular case, the stern severity of the judge.

None, however, will quarrel with the precept, though they may incline not to imitate the example. But even a mild and Christian philosopher, sitting in his own closet and studying an excuse for the breach of a military command, was after all obliged to content himself with an apology, in a possible but single case; or rather, his ingenuity being tasked, was unable to suggest anything more than an expedient, and that perhaps not altogether unexceptionable, which might plead for a suspension in the execution, not in the supersession of a military order.

1478 To use the words of *Archdeacon Paley:* "If the commander-in-chief of an army detach an officer under him upon a particular service, which service turns out more difficult or less expedient than was supposed, insomuch that the officer is convinced that his commander, if he were acquainted with the true state in which the affair is found, would recall his orders, yet must this officer, if he cannot wait for *fresh directions* without prejudice to the expedition he is sent upon, pursue, at all hazards, those which he brought out with him."

The impression of this passage might be broken, but could not apparently be strengthened, by any comment.

SECOND SPECIFICATION, FIRST CHARGE.

The second specification under the first charge of disobedience of orders is next to be considered. That specification was based on the following order:

[General Order No. 5.]

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 30, 1862.

Gens. MCDOWELL and PORTER: You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that, as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I

presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall upon the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be, for the present, with Heintzelman's corps or at this place.

JOHN POPE,
Major-General Commanding.

To understand the condition of affairs at this time, a little explanation, in order to make a connected narrative, is desirable. We have seen that on the 27th of August General McDowell with his corps and Reynolds' division and Sigel's corps were interposed between Jackson and Thoroughfare Gap, and that Jackson's supports were beyond that range of mountains, pushing forward with all their might lest he should be captured, and that Heintzelman's corps, comprising Hooker's and Kearney's divisions and General Reno's detachment of the Ninth Army Corps, were within easy striking distance, and petitioner's corps was but a few miles away between Manassas Junction and Bristoe, while Banks' corps was behind petitioner's in charge of the trains. In order to envelop Jackson, Kearney's division of Heintzelman's corps and Reno's detachment on the same night received orders which brought them, one to Bristoe and the other to Manassas Junction; but as Jackson had retired to Centreville these forces and Hooker's division of Heintzelman's corps were pushed up toward the stone house and Centreville. It is not necessary to discuss here the curious concatenation of circumstances by which in the movement of McDowell's and Sigel's corps from the neighborhood of Gainesville east between the Warrenton pike and the Manassas and Gainesville road on the 28th they became separated, Sigel moving to Manassas Junction, Ricketts' division of McDowell's corps being sent back
1479 to hold Thoroughfare Gap, arriving too late to make it effectual, King's division of McDowell's corps pursuing the Warrenton, Gainesville, Groveton, and Centreville pike toward Groveton, running into Jackson, who had abandoned Centreville, taken up a concealed defensive position just north of Groveton within a few hundred yards of the Independent line of the Manassas Gap Railroad, having a fight there on the night of the 28th, then, without, seemingly, the best of reasons, King's division quitting that pike and moving down to Manassas Junction by the very road by which petitioner was next day, in view of this falling back, ordered to advance; Reynolds' division meanwhile having come down between Sigel and King partially across the country and down to Bethlehem Church and then up the Sudley Springs road and out to the left, south of the Warrenton road. General Reynolds, we have seen, was within supporting distance of King on the night of the 28th, because he testified he rode over across the country from Newmarket to the Warrenton pike near Groveton and then westward to General King's position along the Warrenton pike (G. C. M. Record, p. 170). His troops followed him, as is plain from Bvt. Brig. Gen. Charles Barnes' evidence (Board's Record, p. 660). The fight of the 28th has nothing to do with this case; but on the morning of the 29th, when it was found by the commanding general, Pope, that King's division, one of the finest in the Army, had left its position of the night before, where it was in-

terposed between General Jackson and Thoroughfare Gap (General King himself being ill at the time), and had come down to Manassas Junction and left the door open, he undertook to close that door by sending petitioner's corps, a fresh body of troops, right out on that road with the greatest expedition.

On the morning of the 29th of August, at 5.30 o'clock, the petitioner had received an order from General Pope, dated 3 a. m. near Bull Run, "to move upon Centreville at the first dawn of day with your [his] whole command, leaving your train to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place and your presence is necessary." (Accused's Ex. No. 4, G. C. M. Record, p. 235.)

It has been sought on behalf of the petitioner to put the receipt of this order at a later time for the reason that in a communication which he dated 6 a. m. to General Burnside he said he had just received the order, and also to put the time of his departure from Bristoe towards Manassas Junction at half-past six o'clock, because the petitioner in the same dispatch to General Burnside said, "I shall be off in half an hour." As to the time of the receipt of the order it is sufficient to say that his own exhibit presented to the general court-martial on his trial shows the hour of receipt to be at 5.30 a. m. His own witness, General Morell, on that trial (G. C. M. Record, p. 146), said the dispatch was received between daylight and sunrise, not *after* sunrise as narrated in the petitioner's opening statement, and that the leading division (Sykes') did not march until seven o'clock, and his own division followed immediately.

The fact remains, therefore, even on the petitioner's own showing in evidence, that the first order he received on the 29th of August, 1862, was not promptly obeyed. At the hour of its receipt, as the troops were merely in bivouac, it seems quite plain that they were prepared for immediate movement and had already their breakfasts.

The petitioner has said in his opening statement that this order surprised him; that no severe engagement could take place near Centreville; that Jackson's army had not gone there. Of this he could know nothing, for he was not at the front. But the statement is gravely made, nevertheless; and at once he sets his judgment up against that
1480 of his commander—settles it to suit himself. Fully apprised that a severe engagement was likely to take place and that his presence was necessary, we perceive that he did not instantly and vigorously push forward, although his troops were now fresh.

Bvt. Brig. Gen. *Horace Bouton*, formerly of the Thirteenth New York, Martindale's brigade, Morell's division, says his regiment was encamped half a mile toward Manassas. The distance from Bristoe Station to Manassas Station was about four miles. (Board's Record, p. 51.)

According to Capt. *George Monteith*, formerly aide-de-camp of the petitioner, and called by him as a witness (Board's Record, p. 310), the head of the column [Sykes'] was halted when it had gone a quarter to a half mile beyond Manassas Junction; and that Major-General McDowell came up a very few minutes after their arrival, and after the arrival of Brigadier-General Gibbon. He also said (Board's Record, p. 315) that the petitioner's troops turned to go to Gainesville about 9 a. m. He also testifies, he being with petitioner, that General Gibbon told them of the action of the night before of King's division upon the Warrenton turnpike, between Groveton and Gainesville. There is a distinction, not, however, of much importance, to be made between Manassas "Station" and Manassas "Junction"; Manassas Junction being, according to the testimony of Capt. *J. A. Judson*, called by the petitioner (Board's

Record, p. 110) where the Orange and Alexandria Railroad joins the Manassas Gap Railroad; and according to General *G. K. Warren* (Board's Record, p. 51), if you wanted "to shorten the distance from Bristoe by turning off towards Gainesville where the roads separated at a very small angle, there would be a variation of a mile," which would be gained in moving off at Manassas Junction towards Gainesville on the Manassas and Gainesville road, instead of coming up at Manassas Station.

As to how far Sykes' division got on the road towards Centreville, under the pressing order the petitioner had received at 5.30 a. m., General *Warren* has said (Board's Record, p. 17):

> While our corps was passing Manassas Junction the order came for us to move towards Gainesville. General Sykes' division had already passed the junction toward Centreville, and my brigade was at the rear of it. I suppose to avoid delay, and without any delay, Morell's division, which was following, turned off on this road towards Gainesville; as soon as it cleared the road our division faced about, which brought my brigade in advance in Sykes' division.

He further said (Board's Record, p. 33):

> My brigade just got past the road at the junction which leads up to Gainesville. * * * General Morell's division moved at once upon the Gainesville road.

So that Morell's division did not go to Manassas Station according to General Warren, but struck off where that small angle is made at Manassas Junction.

Private *John S. Slater*, Thirteenth New York Volunteers, called for the government, Martindale's brigade, Morell's division, said (Board's Record, p. 324) that they marched towards Manassas from Bristoe, and then cut across the country.

This is further confirmed by the evidence of Maj. *Geo. Hyland, jr.*, of the Thirteenth New York Volunteers, called for the petitioner (Board's Record, p. 115), who says that from near Manassas Junction they went toward Gainesville.

Sergeant *Ferdinand Mohle*, who belonged to the same regiment in Morell's division, a government witness (Board's Record, p. 675), says that they got not quite up to Manassas Junction when they countermarched.

It is confirmed also by the testimony of Brevet Lieut. Col.
1481 Joseph P. Clary of the same regiment, a government witness (Board's Record, p. 672), who says the same thing substantially.

The petitioner has said (p. 26 of his opening statement), that hastening in advance of his command to join General Pope he met verbal order to march to Gainesville and take King with him; that this verbal order required him to reverse his march and move back through Manassas Junction and along the Gainesville road past Bethlehem Church to Gainesville; that because it was a verbal order he sent one of his staff, Dr. Abbott, to General Pope in order to procure a written order.

For some occult purpose Capt. *John H. Piatt*, an aide-de-camp of General Pope, has been introduced into this case by the petitioner. In his testimony he stated substantially that after General Pope reached Centreville on the morning of the 29th, *he* was sent back with an order to General *McDowell* which was to direct General *Porter* to take General *King* and advance towards Gainesville; and that he met the petitioner near Bull Run Creek, on the west side of the creek, and also his troops, about nine o'clock, moving up towards Centreville in marching order (Board's Record, pp. 1142, 3, 4, 5); that he gave the purport of the order to the petitioner, who told him where he would probably find General McDowell; that he rode on and found General McDowell about or near

Manassas Junction and gave him the order; and that General McDowell told him "to say to General Pope that he had received his order and he had directed Porter to put King upon his right, so he could have him if he wanted him—that is, if General Pope said so."

Unfortunately for the credibility of this evidence, Captain *Monteith*, as we have seen, had made a different statement. If General McDowell had directed General Porter to do that which he told Captain Piatt he had directed him to do, it is hardly conceivable that petitioner would have presumed to continue his march towards Centreville in defiance of such an order. But everything points to the conclusion, from the petitioner's own statement, that the verbal order he received was addressed to himself and followed almost immediately by a written order from General Pope through General Gibbon, and certainly before he had seen General McDowell at all, because General Gibbon's order was in his possession before General McDowell appeared, according to his own evidence.

It is further evidenced by the joint order which forms the basis of this specification in which General Pope mentions that he did not know General McDowell's position until a late hour in the morning.

Major-General *Morell*, also a witness for the petitioner, says (Board's Record, p. 421) that General Sykes' division was at Manassas Junction at 8.30 a. m., as appears by the dispatch of Sykes to Morell.

Also by dispatch which he produced, of the petitioner's assistant adjutant-general, that the head of the column was halted beyond the junction.

Lieut. *S. M. Weld*, another former aide-de-camp of the petitioner and a witness on his behalf, has stated (Board's Record, p. 262) his impression that the head of the column did not get over half a mile beyond Manassas Junction, though the petitioner himself went beyond towards Centreville, and that they turned towards Gainesville about 9 a. m.

Assistant Adjutant-General Locke has said in his evidence on this subject as follows:

Q. How far did you and General Porter, being in advance of the troops, get beyond Manassas Junction towards Centreville?—A. We got to the brick house called a warehouse (Weir house), which was a little below the junction. There we stopped for some little time, and General Porter held a conference with General McDowell.

1482 Q. In that house?—A. The outside of the house. After this conversation closed, the general and myself rode on probably a quarter of a mile towards Centreville. There we were met by an officer from General Pope, who gave General Porter a verbal order to the effect that that march was to be changed to the direction of Gainesville, and then immediately sent me back to halt the column for fear that it should get too far and they would have to retrace their steps.

So that this witness did not pass all of General Porter's corps, or pass any of it.

Q. Did not he accompany you?—A. Not just then. I left him in conversation with this officer.

Q. How soon did he come up?—A. Very soon after.

Q. And joined you at Manassas?—A. Yes, sir.

Q. You having halted the column as you passed up?—A. Yes. I met the head of the column as I got up just near where we turned to go up the Gainesville road.

Q. Did you know Dr. Abbott on the staff of General Porter at that time?—A. Yes, sir.

Q. Do you know of his having that morning gone to General Pope and brought back an order or a message?—A. I think I recollect the circumstance.

Q. When you got back to Manassas Junction, what happened?—A. As I halted the head of the column, General Gibbon rode up with an order to General Porter from General Pope in writing. He gave me the order and I think I read it before General Porter joined us. He came up almost immediately. The order was signed by General Pope himself.

As the column was halted at Manassas Junction at 8.30 a. m. (Sykes' division), according to Sykes' own dispatch, it is plain that the verbal order which the petitioner received to move toward Gainesville must have come into his possession before the column had halted. While there they were taking ammunition from their train, which, according to General Morell (Board's Record, p. 422), took only half or three-quarters of an hour; and according to Assistant Adjutant-General Francis S. Earle, a witness for the petitioner (Board's Record, p. 409), detained them only about half an hour. He also says (Board's Record, p. 414) that they left Bristoe that morning about 7 a. m. for Manassas Junction. As Capt. George Monteith, petitioner's former aide-de-camp, has said (G. C. M. Record, p. 127), in 1862, that they found their ammunition train going into Manassas Junction when they got there, and as it took half an hour for them to obtain it from the wagons before countermarching partially toward Gainesville (Sykes' division being the only one that had to face about, the head of Morell's division not having gone beyond the junction, where the roads, according to General Warren, made a very small angle), it is apparent, even on the petitioner's own statements, that nine o'clock is about the time, at the outside, the head of Morell's division moved to the left toward Bethlehem Church and Gainesville, followed thereafter by Sykes, who, from being on the right, had now become the left division.

Much has been said of an interview at the Weir house between Major-General McDowell and the petitioner, near Manassas Junction, on that morning. It will be noticed that Captain Piatt, the officer or aide-de-camp of General Pope, who had met the petitioner on the road between Manassas Junction and Centreville, had quite a long conversation with him there, according to Colonel Locke. Therefore, when the petitioner met General McDowell at the Weir house, it is apparent that he must have had the latest information from General Pope of what was going on and what was to be done. That should be contrasted with his opening statement that he looked to McDowell as the man above all others to give him that information.

1483 Brigadier-General *Gibbon*, of King's division, after the night march of the 28th August down from the Warrenton pike to Manassas Junction, started just as the day was breaking (Board's Record, p. 243) to find General Pope in order to notify him of the fact that General King's division had retired from the Warrenton pike and was no longer interposed between Jackson, who was north of Groveton, and Thoroughfare Gap. Finding General Pope at Centreville, having ridden there as rapidly as he could, a distance of six miles, he gave him information, and immediately received a written dispatch to petitioner, was furnished with a fresh horse, and started back, meeting the petitioner at the junction. He says when he arrived back he found petitioner's troops stationary. Almost immediately afterward, while the petitioner had the order in his hand, General McDowell came up and the petitioner gave it to him. Brigadier-General Gibbon says (Board's Record, p. 245):

> General McDowell requested General Porter, when he formed his line of *battle*, which it was supposed he would form in the direction of Gainesville, that he would place King's division on his right, so that he (McDowell) could have his command together, it being known at the time that Reynolds' division, a portion of McDowell's command, was out in that direction somewhere, supposably on the right of what would be Porter's line.

At that time General Gibbon says that General McDowell did not assume command over the petitioner, hence the request. That order

which the petitioner received at the hands of General Gibbon was as follows:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, Aug. 29, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we will lose much.

JOHN POPE,
Maj. Genl. Commanding.

Certainly language could not be plainer in order to apprise the petitioner what the commanding general proposed to do, and General Gibbon's own testimony, which I have thus cited, shows the intent to form a line of battle.

Gainesville may be assumed, for the consideration of the geographical features of this case, to be the apex of an equilateral triangle to the westward, with Manassas Junction at the angle to the south and Centreville at the angle to the north, the base line being between Centreville and Manassas Junction. It is apparent, therefore, that by rapidly moving up what is known as the Manassas and Gainesville road toward Gainesville on one side of the triangle, and Major-General Pope's forces moving up on the Gainesville, Warrenton, and Centreville pike ("Warrenton pike") from Centreville on the other side of the triangle, the two separated portions of General Pope's army would rapidly converge upon the same point. If General Pope's forces were following the enemy down the Warrenton pike and petitioner's forces on an unobstructed road could move with expedition, it would place them on the flank and possibly on the rear of the enemy.

ROUTE OF MARCH TO GAINESVILLE.

At 9 a. m., which is the hour also put by Brig. Gen. *Charles Griffin*, a witness for the accused on his original trial (G. C. M. Record, p. 162) as the time when they started out, Morell's division of the petitioner's corps moved toward Bethlehem Church and Gainesville.

1484 The petitioner puts the arrival of his command at Dawkins' Branch, beyond which it did not collectively go, at 11.30 a. m.

According to the petitioner's witnesses, Major Warren and Mr. Judson, the distance from Manassas Junction to Bethlehem Church is three miles, and from Bethlehem Church to Dawkins' Branch, the point at which petitioner's head of column halted for the day, is two miles—in all five miles. (Board's Record, pp. 51, 109.)

Brigadier-General Gibbon says (Board's Record, p. 253) that he accompanied the head of the column to pilot it into the Manassas and Gainesville road, which he had just passed over the night before; and says, further:

I accompanied General Morell, my impression is, until I approached the position where I had left my brigade in the morning. I cannot tell where that was. I don't know how far from the junction that was. When I got to that position, probably before, I left the column of the Fifth Corps, and resumed command of my own brigade.

His brigade of King's division, to which belonged the Sixth Wisconsin Volunteers, was lying between Bethlehem Church and Manassas Junction, where he rejoined it when he ceased to pilot Morell's division on the road he had been on during the night. On cross-examination, with reference to this interview between the petitioner and General McDowell, Gibbon said (p. 254):

Q. General McDowell said he wanted to have you so place your division that you could come in on the left of Reynolds?—A. That was not the way he put it. It was to

go in on Porter's right; that was the way he said it; that is what he meant according to what I understood; on the left of Reynolds, but he didn't put it that way.

Lieut. *E. P. Brooks*, adjutant of the Sixth Wisconsin, appears to have been detailed to show Morell's division the road. His testimony is as follows (Board's Record, p. 1022):

Q. Where were you on the morning of Friday, August 29, 1862?—A. On the morning of the 29th I came with King's division from the battle-field of the night of the 28th back to Manassas Junction.

Q. What orders, if any, did you receive that morning?—A. I received an order to go with Morell's division of Porter's corps back to the battle-field where King had fought the night before.

Q. Did you do so?—A. I went back to a point where I presumed General Morell would have no difficulty in finding his way to the turnpike, and then I returned to King's division.

Q. Could you, by looking at the map, indicate the point to which you went with Morell's division [Duffee map shown witness]?—A. We moved out on the Gainesville road. I do not think this map is quite complete.

Q. State in what respect.—A. There is a road running from somewhere in this vicinity across in that direction [across to Lewis lane No. 1].

Q. From whose place and to what point?—A. I could not say. I merely know from the general direction that I carried Morell's division; I rode with Morell at the head of the division until we reached this point. My impression is that we crossed Dawkins' Branch, but I am not positive about that. We certainly got so near here that I could point out to him the direction of the battle-field of the night before.

Q. Which road had you come down the night before from Gibbon's battle-field?—A. The battle-field of the night before, the line of battle ran across there [near the Douglass and Brewer houses]. There were two regiments of Gibbon's brigade engaged on the east of the woods. When we fell back that night we fell back directly across the Warrenton turnpike, and struck the lane about there [about near the word "lane" of Lewis lane No. 2]. Colonel Bragg and myself were at the head of the column; and we marched down this way until we reached this road here [not indicated], and this road [road marked in ink on the map "E. P. B."]. Then we followed down the Manassas and Gainesville road to the junction. When we got there, as I say, in the morning, I went back with Morell's division to this point. [Witness indicates a point near Dawkins' Branch.]

1485 The general concurrent testimony of the witnesses puts the arrival somewhere at about 11 a. m.

Capt. *Augustus P. Martin*, chief of artillery to the petitioner, and called as a witness for him, both on the original trial and now (Board's Record, p. 1128), puts the arrival of the column at Dawkins' Branch at about 11 a. m. That would make its rate of march 2½ miles an hour; King's division following behind; and Major-General McDowell being with it, he being the senior to the petitioner in rank, but not at first apparently assuming any command.

From the fact that General Gibbon brought the order from General Pope, and Lieutenant Brooks was detailed from his [Gibbon's] brigade to act as pilot the remainder of the distance, it seems to be manifest that when General Pope ordered the petitioner to push forward upon Gainesville he intended that they should take the very road that King's division had come down upon the night before, which ran into the Warrenton Pike a little easterly of Gainesville.

It is to be noted here that the road leading from Deats', just south of Dawkins' Branch at its junction with the Manassas and Gainesville dirt-road, up to Lewis lane No. 1, is not indicated on this map, although testified to by Lieutenant Brooks as a road then in existence. It was presumably an army road, like one of the many made through that portion of the country during the years 1861–'62, while the Union and Confederate armies were respectively encamped there. I find by my notes made during a personal inspection of the ground last August that the inhabitants of that locality pointed out to me the location of this very road, the traces of which are still visible, and that I put it down at the

time upon my map not knowing of the positive evidence Lieutenant Brooks has since given as to its former existence. In looking at the official map it is apparent that that would be the shortest route, from Milford and Bristoe up through Deats' past Thomas Nealon's, a little to the eastward of his residence, and so on up to Lewis lane No. 1, where it strikes the *old* Warrenton, Alexandria and Washington road, and thus through Groveton, to Sudley Church, and Aldie. The fact, therefore, of the existence of that road in 1862 does not merely depend upon the notes of my own inspection, but is supported by the evidence of a material witness. But one witness has given a different route for King's division in coming down from the Warrenton pike to Manassas Junction during the previous night, and that is Captain Judson (Board Record, p. 108); but on cross-examination (p. 109) he said, "I have no recollection of the march at all."

Brig. Gen. *Marcenus R. Patrick*, another witness for the petitioner, who was in the fight of King's division on the 28th, said they "struck south" (Board's Record, p. 185); and on page 187 Board's Record he said (after mentioning their position next morning near Bethlehem Church):

Q. by PETITIONER. *What happened next after King's departure for Centreville?*—A. I was ordered I think by McDowell in person, to move as soon as I could in the rear of General Porter; Porter having just passed through, or passing through nearer Manassas Junction, to go back to the scene of our fight the night previous.

From this it will be perceived incidentally that Brig. Gen. Rufus King, who commanded the particular division of General McDowell's corps, *had at this very time departed for Centreville from Manassas Junction.* On cross-examination this same witness, referring to this movement of the petitioner's corps towards Gainesville, and past the place where King's division was lying in the road, quotes from his diary as follows:

At about ten o'clock Porter's corps having passed on towards our lines of yesterday we were ordered to follow him, and did so.

1486 Further on the witness said (Board's Record, p. 196):

Cross-examined by RECORDER:

Q. Did you know at the time what orders they had?—A. No, sir; I don't think I did; but I knew that Porter was ordered forward to the scene of yesterday's operations, because McDowell told me that.

Q. Where was the scene of the previous operations?—A. Where we had the fight before.

Q. On the Warrenton pike?—A. My inference was, from what McDowell said to me, that he wanted me to go in there, because I could pilot Porter.

Q. On the Warrenton pike?—A. Our fight was up where Gibbon was [northwest of Groveton].

Q. Was that fight reported as being at Gainesville, rather than at Groveton, of the night before?

Mr. CHOATE. Reported by whom?

Q. Well, by anybody. By King.—A. It had not taken form yet. I don't know that many people knew about it. I don't know that Porter knew about the fight much until I told him. I don't remember whether it was called Gainesville or Groveton.

* * * * * * *

Q. How did this conversation between you and McDowell arise, in which you have said that he made some remarks in reference to General Porter's position on that road?—A. Do you mean when he met me to turn me back?

Q. Yes.—A. It was because he had ordered me to tell General Porter to keep with me and to pilot him back to the scene of last night's operations. I think the language was that I was to go with Porter back to the scene of last night's operations.

Q. When he spoke of General Porter's position when he came and took you up the Sudley road, do you recollect his language?—A. I do not.

* * * * * * *

Q. How rapidly did you march that morning on that road from Manassas Junction towards and beyond Bethlehem Church?—A. I think Porter's rear had got along some little distance before I joined, and that I marched rather rapidly until I got up with him.

Thus it is apparent that at the time Lieutenant Brooks was piloting the petitioner's corps under the order that Brigadier-General Gibbon had brought from Major-General Pope, the *purport and intention of that order was that petitioner's corps should move up to the lines occupied in the fight of the evening before by King's division on the Warrenton pike just south of the Browner-Douglass place* delineated on the map which has been used in this case.

Major *G. K. Warren*, the petitioner's witness, says (Board's Record, p. 18) that arriving at Dawkins' Branch he "found that General Morell's division had moved off to the right towards the Manassas Gap Railroad, * * * say a quarter of a mile"; that General McDowell had been at Manassas Junction that morning with the petitioner. At the last-named place the petitioner was not under his [McDowell's] command and had received the latest information from Major-General Pope. Whatever information Major-General McDowell could furnish him at that time relative to the actual situation of affairs from the limited knowledge he [McDowell] *then* had might be, and possibly was, serviceable; but it would have had no effect whatever so far as the petitioner's order was concerned which he [petitioner] had received at that time from General Pope to move "at once towards Gainesville and be expeditious or we should lose much." That was the order which controlled and governed petitioner's action at that time, and neither Major-General McDowell nor any one else could rightfully have influenced him in delaying to obey that order.

That General McDowell was anxious to furnish him with all the information possible is manifested in the fact that he gave him
1487 his own map of that part of the country, which, as it turns out, was the only map they had at that time.

About the time the column halted at Dawkins' Branch, on the Manassas and Gainesville road, Dr. Abbott, of the petitioner's staff, returned from General Pope's headquarters with the *written* response that the petitioner had requested in the morning when he first received a *verbal* order from General Pope to move in that direction, this written order by Dr. Abbott's hands being supplementary to a written order which had been sent intermediately to the petitioner by the hands of Brigadier-General Gibbon. (G. C. M. Record, p. 65.)

For disobedience of the joint order the petitioner was tried under the specification we are now considering. He has shown in his opening statement, page 31, that he knew what the objects were to be accomplished under this joint order, namely:

1st. To move toward Gainesville;

2d. To establish communication with General Pope's forces on the right; and

3d. When this communication was established to halt.

He says that there was nothing in this order that contemplated a battle; but *in the light of previous orders that he had received that day, and of the orders he had received on previous days*, it seems quite clear that this last statement of the petitioner is one that cannot be sustained. The very first order he received form General Pope that morning said:

> A severe engagement is likely to take place, and your presence is necessary.

Two days before, on the 27th of August, he had received a communication from General Pope, through the chief of staff of the Army of Virginia (see page 88, petitioner's opening statem nt), in which he was told that the army would probably move to attack the enemy next day

in the neighborhood of Gainesville. And on the day before that, the 26th of August, General Pope in person wrote him a communication (see petitioner's opening statement, page 87), in which he said:

I do not see how a general engagement can be postponed more than a day or two.

The second order from General Pope that the petitioner received, at the hands of General Gibbon, that morning, the 29th August, at Manassas Junction to push forward with his corps and King's division on Gainesville, and "be expeditious," showed that the purpose of General Pope was to attack the enemy before he could receive re-enforcements, and, if possible, overwhelm and destroy him. And from the fact that General Gibbon had delivered the order to petitioner in person, and told him all about the operations of the night before, and of his [Gibbon] proceeding of his own accord to see General Pope in order to have troops sent out in this very direction to intervene between Jackson and anything that might be coming through Thoroughfare Gap, for the express purpose of overwhelming Jackson, if possible, it is apparent that at the moment the petitioner received the joint order from General Pope at the hands of Dr. Abbott, of his staff, *he knew that the movement on Gainesville was for the express purpose of engaging the enemy.* Otherwise, no reasonable explanation could be given of the order which he had received from General Gibbon, that as General Pope's army was following the enemy down the Warrenton pike, he, the petitioner, was to "be expeditious" in getting up towards Gainesville, or we should "lose much." It must be noted, also, that in this joint order the previous order received at the hands of General Gibbon is taken as expressive of the intention of the commanding general with reference to the joint order itself, for he says, in the joint order:

I sent General Porter written orders to that effect an hour and a half ago.

1488 Namely, to move forward on Gainesville.

But General Pope also stated what troops were moving down the Warrenton pike or that vicinity; that they could not be very far from Gainesville, and that *as soon as communication was established between that force and the petitioner's and General McDowell's*, the whole command should halt. The accidental fact mentioned that it might be necessary to fall back behind Bull Run at Centreville that night was, as General Pope presumed, "on account of his supplies." General McDowell, by the joint order, was directed to take immediate steps to communicate with his other division commander, Brigadier-General Ricketts, so as to instruct him to rejoin the other divisions of his corps as soon as practicable. Now, one of the divisions attached to General McDowell's corps at that time was Brigadier-General Reynolds' division, which was placed on the left of Maj. Gen. Franz Sigel at daylight by General McDowell's personal orders, having reference to an offensive movement which General Sigel had been directed to make by General Pope against the enemy. The petitioner *was aware of this*, and yet he says there was nothing in this order that contemplated a battle. The "joint order" itself was merely the result of petitioner sending Dr. Abbott of his staff to General Pope for written orders when he received between 8 and 9 a. m. verbal orders—he not then knowing that written orders were coming intermediately to him from General Pope, at General Gibbon's hands.

The moment General McDowell received *his* copy of the joint order, he rode forward to the head of the petitioner's column from the position he himself had taken on the Manassas and Gainesville road near Sudley road, to await General Ricketts' arrival from Bristoe Station.

We know from the testimony of a number of witnesses that even while petitioner was at Manassas Junction in consultation with General McDowell, Sigel's artillery was heard in action; and that when the petitioner's head of column reached Dawkins' Branch the noise of the contest obliquely on his right and rear was plainly perceptible. In other words, the main column, under General Pope, had met the enemy east of Gainesville, between it and Groveton, and had become engaged with it. For the petitioner, therefore, to continue his march towards Gainesville on the road to the left and southwest of Thomas Nealon's was to march away from the place of action and separate still more widely the two flanks of the army.

In order to carry out the requirements of the joint order that the army should not be in this unmilitary shape, it was absolutely necessary that the Fifth Corps should be taken directly over to the north and right, in order to form connection with Brigadier-General Reynolds' division, which was on the left of General Sigel's corps of General Pope's army.

There were three ways of doing this:

1st. Of moving directly by the Army road (which Lieutenant Brooks had shown General Morell as being the one which King's division had come down that night) due north to Groveton from Dawkins' Branch.

2d. By directing the head of the regular division, under General Sykes, to take the Milford road from Milford and Bristoe which went up through Five Forks to Compton's lane.

3d. To take the road known as the Manassas and Sudley road to the rear of the line of battle, which would have made it necessary that the divisions of the petitioner's corps should countermarch for that purpose; the forks of the Manassas and Sudley and the Manassas and Gainesville road being distant 2⅝ miles from the head of petitioner's column at Dawkins' Branch.

But in this connection it should be noted under this third head,
1489 that as the country was quite open midway between those two points, troops could be carried right across the country to that road, just as General McDowell carried, according to General Patrick's evidence, the latter's brigade of King's division to the Manassas and Sudley road in order to apply it and put it in action soonest in the manner which had been suggested by petitioner himself to McDowell just before.

No explanation has been given why the petitioner made no effort during all that long 29th day of August, 1862, to push his corps up into conjunction with General Pope's army by means of the roads passing through Five Forks. If north of the Manassas Gap Railroad the woods had been as impenetrable as he would have us believe, it is plain that in passing through those roads in order to take position to the left rear of our army, under General Pope, his troops would have been protected from any flank attack which he would have appear as so much to have been dreaded while making the movement.

John T. Leachman, one of the petitioner's witnesses, a resident of that vicinity, whose evidence is yet to be commented upon, said, however (Board's Record, p. 123), that in 1861 and 1862 the Confederate forces encamped not far from Bethlehem Church; and on page 125, that sometimes wagons for country purposes are driven along these very roads through Five Forks; this evidence of the witness having reference to the road as it was in August, 1862.

Major *Warren*, the petitioner's witness (Board's Record, p. 17), said that no prudent man having anything at stake would march his men through there unless he had possession of the outskirts; if he had pos-

session of the outskirts he could march a column through there very well. This evidence he qualified further (Board's Record, p. 39) by saying:

> It is always possible where a man can go afoot to take an army.

By examining the record it will be seen that no effort whatever was at any time made by the petitioner during that day to ascertain the character of the roads through "Five Forks" up to the left and rear of General Pope's army. He does not seem to have sent any staff officers up there, nor any orderlies, nor anybody, and his failure to do so can then only be explained on the supposition that he did not care as to what was being done on the right.

We know from the testimony of two government witnesses, Captain *McElcorney*, of the Twenty-seventh Confederate Virginia Infantry, and Lieut. *B. T. Bowers*, First Ohio Battery (Board's Record, pp. 952, 953, 956), that the roads through Five Forks from the Manassas and Gainesville road up to the old Warrenton, Alexandria and Washington road at Compton's lane are good and that they drove through that very road at a trot in a two-horse wagon.

When the petitioner's corps came to a halt, the head of the column at or near Dawkins' Branch, which, by the way, in the month of August is nothing but a dry ditch or ravine, General McDowell, who was with King's division on the rear of the road awaiting the arrival of General Ricketts' division from Bristoe, received his copy of the joint order, and immediately moved to the front in order to communicate with petitioner and assume command for the time being under its requirements.

Major-General *Morell*, petitioner's witness, who was at the head of the column, says (Board's Record, p. 432), that they met a mounted man before reports came from the skirmishers. In his original evidence before the court-martial he said as follows (G. C. M. Record, p. 146):

> We had gone up the road towards Gainesville, perhaps about three miles, when I met a mounted man coming towards us. I stopped him and asked him the
> 1490 road to Gainesville and also the news from the front. He said he had just come from Gainesville, and that the enemy's skirmishers were then there to the number of about 400, and their main body was not far behind them. I then moved up the road, and in a short time our own skirmishers reported that they had discovered the enemy's skirmishers in their front. The column was then halted by General Porter, who was with me.

This mounted man to whom this witness refers was evidently one of General Buford's cavalry; because he would otherwise have held him in custody as a suspicious character. And as this argument progresses in reference to the evidence in this case it will be perceived that on that very road had come down that morning and was then with General Morell a squadron of this very cavalry under Capt. John P. Taylor. Therefore, if there were any of the enemy's skirmishers on that road at that time they were just arriving there; and it remains to be considered what skirmishers they were and where they came from.

It seems that the Sixty-second Pennsylvania held the infantry advance on this road; and when it was fired upon by the skirmishers, the columns halted by the petitioner's orders. Two companies of that regiment were in the advance; immediately the other eight companies were sent out. What was done at that time is best described by Brig. Gen. Charles Griffin, who testified for the accused on the original trial, and whose evidence is given in brief at page 497, Board's Record:

> Page 161 G. C. M. Record: The halt at Manassas Junction was for half an hour. Page 162: Left Manassas at 9. The skirmishers, Sixty-second Pennsylvania, commenced firing with the enemy's pickets possibly five miles from Manassas. Porter rode up and column halted. The other eight companies Sixty-second send out. Porter

then read Pope's communication (the one jointly to Porter and McDowell) to himself, Morell, and Butterfield, all dismounted. We then went back to the rear on a hill, say three hundred yards. A battery, I believe, was placed in position there. We were there some time when McDowell rode up. Pickets of the Sixty-second were recalled by Griffin by order. P. 162: I received an order almost directly after General McDowell had left, to recall my pickets and orders to move my command to the right. I attempted to go to the right and moved probably 600 yards until with the head of my column I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I cannot say who, "You can't get through there." We then faced about and moved back to the hill. * * * My brigade was then placed in position. It was a very good position to repel an attack. P. 165: When my brigade moved to the right across the railroad we ran into some little, thick, pine bushes; halted until ordered to move back again; made no reconnaissance whatever. P. 169: Merely obeyed orders. P. 162: During the day large clouds of dust were going to our front and to our left from a point stated to us then to be passing through Thoroughfare Gap. There were large clouds of dust all that afternoon, in fact nearly all day, as I can recollect, coming from a point said to us to be Thoroughfare Gap. I should say it was three or four miles from where I was; fully that. I except, of course, these batteries that opened on us about ten o'clock; they were nearer. They were within 1,200 or 1,500 yards. We saw scattering groups of horsemen or of infantry. *In fact, there is not a doubt, if that point was Thoroughfare Gap, that the enemy was coming through there all day.* P. 163: When Morell got his orders near sundown to attack "we had started back towards Manassas Junction."

The skirmishers from the Sixty-second Pennsylvania, which crossed Dawkins' Branch, appear to have been almost immediately withdrawn and the Thirteenth New York Volunteer Infantry, under Col. E. G. Marshall of the Regular Army (now colonel United States Army, retired), sent out in its stead.

Lieut. *Walter S. Davis*, Twenty-second Massachusetts Volunteers, petitioner's witness, says (Board's Record, p. 398) that Colonel Marshall was sent out *before* General McDowell arrived.

Assistant Adjutant-General *Francis S. Earle*, petitioner's witness (Board's Record, p. 415), says that Marshall was thrown out as soon as they began to deploy, which was immediately, and that General
1491 McDowell came up *afterwards* (Board's Record, p. 416); also that General Morell that day said he had about 6,000 men in his division.

Capt. *George Monteith*, aid-de-camp of the petitioner, called for him (Board's Record, p. 311), says General Morell detailed Colonel Marshall to move out *before* General McDowell came up.

Private *John S. Slater*, Thirteenth New York Volunteers, now a lawyer, a government witness, says that petitioner detailed Colonel Marshall for this duty. (Board's Record, p. 325.)

Major-General *Morell* himself, petitioner's witness, said (Board's Record, p. 432) that Colonel Marshall was sent out as soon as the division halted at Dawkins' Branch.

Lieut. *James H. Wilson*, Thirteenth New York Volunteers (Board's Record, p. 370), called by the government, says that his regiment, under Colonel Marshall, was immediately deployed. He answered further as follows:

By the RECORDER:

Q. Did you see the enemy that day?—A. I don't recollect that I did. I do not have any recollection now of seeing any of them.

We know the direction in which Colonel Marshall's regiment was deployed, from his own evidence as well as the evidence of others not disputed; they were thrown out in the space directly to the front between a ravine just northeast of Thomas Nealon's and the Manassas and Gainesville road where it took a turn towards the left from Dawkins' Branch and westerly to the woods in front. A continuation of that road,

which led somewhat to the left from Dawkins' Branch, would have carried the petitioner's corps still further away at every step he would have taken from General Pope's army, which at this time, from the sound of cannonading, was northeast of him, to the right and a little to the rear.

At this juncture Major-General McDowell rides up with a copy of the joint order in his hand.

It was testified to in the original trial by Assistant Adjutant-General Locke, for the defense (G. C. M. Record, p. 135), that General McDowell said:

> Porter, you are too far out already. This is no place to fight a battle.

That portion of the remark, that it was no place to fight a battle, General McDowell explicitly denied in his evidence, because it was a very good place in which to fight a battle.

There were, however, other considerations to come in there, namely, whether it was a good place to fight a battle in when he did not believe the enemy to be on his immediate front in force, and when by remaining there the left wing of the army would be separated from the right, contrary to all military principles, a distance from a mile and a half to two miles; so that if any enemy did come down in their front they would be enabled to interpose and destroy them in detail. General McDowell said on the original trial on cross-examination as follows (G. C. M. Record, p. 87):

> I have no recollection about that place not being the one in which to fight a battle. Something may have been said about not going further toward Gainesville in reference to falling behind Bull Run that night.
>
> Q. If anything was said in relation to the facility of getting back to Bull Run that night, do you remember whether it was that the accused was too far in the front or would be too far in the front if he moved further on?—A. It was hardly a question of going further on; it was more a question of turning to the right and going against the enemy then passing down the Warrenton pike.

1492 With reference to the remark testified to by Assistant Adjutant-General Locke, and which has been repeated in other forms by other witnesses for the accused before this Board, General McDowell in the original trial further said (G. C. M. Record, p. 218):

> I cannot recollect precisely what occurred between General Porter and myself, or what conversation and what words passed between us at that time. The subject of our conversation, as near as I can recall it to mind, was the order which we, each of us, had received from General Pope, and particularly that part of it which referred to our not going so far forward that we should not be able to get behind Bull Run that night or before morning. I cannot say what language I used or how it may have been understood whilst talking on that point. As to that particular speech, that the ground, so far as topography was concerned, not being a place to fight a battle, I have no recollection of having said anything to the effect that it was not a good place to fight on. It was about as good a place, so far as topography was concerned, as any other in that part of the country. I think our conversation was chiefly upon the subject of not putting ourselves in a position to be unable to fulfill the requirements of the order about retiring behind Bull Run, and about not going so far towards Gainesville, or going to Gainesville, *that this could not be done.* Without being able to say what was said either by him or me, I think, so far as my best recollection goes, that the object and purpose of our conversation at that time was in relation to that point.

As the principal purpose in that movement towards Gainesville, after it became evident by the cannonading that General Pope's right was engaged, was that the two wings should unite, the remark attributed to General McDowell by these persons is the one that he would most naturally have made under the circumstances, that the petitioner was too far out, too much to the left, at too great distance from the other wing of the army to render it any service under the circumstances as they then existed. The presence of two regiments thrown forward as skir-

mishers beyond Dawkins' Branch, principally to the left of Nealon's, showed that a continuation of the movement in that direction was improper and faulty. Major-General McDowell was then in command under the (old) sixty-second article of war by reason of the joint order. It was his duty to decide upon the circumstances of the case and determine what should be done in order to comply with the wishes of the commanding general. The order itself specifically gave him a discretion to vary its mode of execution to suit the circumstances. Had no discretion been given his action might have been different. The discretion being given him, his decision was conclusive, and formed part of the joint order itself as communicated by him at the time to the petitioner, who was the other corps commander, and who himself suggested the variation.

General McDowell made the decision, and we shall see what was required to be done under it. In point of fact, that which General McDowell directed under the joint order was precisely that which the order previously received by the petitioner at the hand of General Gibbon from General Pope required, namely, *to go to the right from Dawkins' Branch, so as to strike the Gainesville and Warrenton turnpike at the point where King's division had been in action the night before*, and not to take the road, still in use, to the left of Thomas Nealon's house, just beyond Dawkins' Branch, but the "army road," running from Dawkins' Branch due north to Lewis Lane No. 1.

Bvt. Maj. Gen. John Gibbon, U. S. A., King's division, McDowell's corps, a witness for petitioner, referring to his interview with Major General Pope early that morning at Centreville, when he went to apprise him of the withdrawal of King's division the night before, said (Board's Record, p. 259):

Q. Did he explain to you the purpose of that order?—A. Well, the fact is that the purpose of the order was rather dictated by myself, because I told him I had ridden
1493 that distance to give him this information, deeming it important, supposing if he had any available troops he would send them out on the road. At that he turned around to Colonel Ruggles and told him to write the order in pretty much the terms I have seen it, directing General Porter to move out on the road, and take King's division with him.

Q. Was that order intended to be the substance of what you had communicated?—A. I think so.

Q. Towards what point did that order direct the march?—A. *I understood right out on the road we had come in.*

Q. Where you were the night before?—A. Yes; if he could get there for the purpose of interposing a force between Jackson's detached force and Lee's main army.

Q. Was it not Lieutenant Brooks who acted as guide on that occasion?—A. I recollect an officer by that name who was reported to me as having been over a portion of the ground, and I think it more than likely that he is the officer.

* * * * * * *

(Board's Record, p. 245.) He further answered as follows [after he returned to Manassas Junction]:

Q. What did you then do?—A. I think, at the request of General Porter—at any rate, at the request of some one—I passed to the head of his column, and accompanied General Morell, the commanding officer of the leading division, into the road leading towards Gainesville, and rode along with General Morell until we reached the position where I had left my brigade in the morning, and then joined that, and the troops passed on in the direction of Gainesville.

Q. Then had General Morell passed the point with his division where your troops were lying in the morning?—A. Yes; not only General Morell, but I presume the whole corps.

Q. That is, they had gone on the road towards Centreville?—A. They had passed where the Gainesville road came into the Gordonsville railroad.

Q. They were going in the direction of Centreville when you delivered this order?—A. Yes. I don't think, however, the head of the column was very far ahead of it.

* * * * * * *

Q. You took an order by which they were to return and go towards Gainesville?—A. They were stationary when I saw them.

Q. Do you know how long they had been stationary?—A. No, sir.
Q. You went back with General Morell?—A. My impression is I accompanied him until I got to my position.
Q. They were marching toward Centreville?—A. Yes, sir.
A. I *did*n't know where General Reynolds was.
Q. You overheard a conversation previous to that between General Porter and General McDowell, did you not?—A. Previous to what?
Q. Previous to being taken off up the Sudley pike?—A. Yes; in the morning when I delivered this order.
Q. General McDowell said he wanted to have you so place your division [King's] so that you could come in on the left of Reynolds?—A. That was not the way he put it. It was to go in on Porter's right; that was the way he said it; that is what he meant according to what I understood; on the left of Reynolds, but he didn't put it that way.

From this evidence it is plain that petitioner knew from General Gibbon before he [petitioner] left Manassas Junction towards Gainesville, on the morning of the 29th, that General Pope's order required him to march just in the direction subsequently indicated by General McDowell.

Col. *Timothy Sullivan*, of the Twenty-fourth New York Volunteers, King's division, McDowell's corps, a witness for the petitioner, said (Board's Record, p. 98), when referring to the fact of his division lying along the road between Bethlehem Church and Manassas Junction, on the morning of the 29th, that petitioner's corps passed them going back on the road that they had come down on.

1494 Bvt. Brig. Gen. *Edward D. Fowler*, commanding at that time the Fourteenth New York Volunteers, the well-known "Brooklyn" regiment, Hatch's brigade, King's division, McDowell's corps (a witness for the government), testified (Board's Record, p. 548) that Porter's corps passed them at Manassas Junction from half past 8 to 9 a. m., and they followed some distance. Said he:

It was expected we would go up and go in at the same place we were in at the night before; but the story was then that somebody over on the right was pressed—Sigel or some one else—and we were turned off in this direction [north], on the Sudley Ford road to go there. We marched in this direction and then on the Sudley Ford road to the vicinity of the old battle-field of Bull Run; I recognized it because I was there, the appearance of the ground, stunted pines, and the nearness of the Warrenton pike. We arrived at that place perhaps at two o'clock in the afternoon—anywhere from one to three o'clock in the afternoon. I was very anxious, and expected even before we halted there to hear, on what was our front and left, the guns of Porter's division. I had an idea that we had Jackson rather in a trap. We remained at that place near the battle-field of Bull Run, near the stunted pines and cedars, on an elevation where we could see the battle going on—not the battle, but the smoke of the battle, because there was a ridge that intervened between us and where the battle was. We could hear artillery and infantry firing, and cheers and shouts beyond this place. We remained there until perhaps five o'clock in the afternoon, maybe half past five, when we had orders to go down on the Warrenton pike and move on the enemy. The impression I had then was that the enemy were falling back.

Petitioner himself, as a witness before Major-General McDowell's court of inquiry, admitted that from information received from Brigadier-General Gibbon he knew that the—

Object was to strike the turnpike before the advancing enemy should arrive. The sooner we arrived there the more effective would be our action. (Board's Record, p. 1009.)

The fact being substantiated that it was expected that the petitioner's corps should go *directly* to the right at Dawkins' Branch, at right angles to the road he was then on (the Manassas and Gainesville road), the next point to be considered is, what was done while General McDowell was in command of the joint corps? Whether the command of the petitioner moved up with expedition to Dawkins' Branch, or not, from Manassas Junction, under the very urgent orders he received, is of comparatively little importance. If he left Manassas Junction at 9 o'clock and

arrived at Dawkins' Branch at eleven, we find that he marched at the rate of 2½ miles an hour. He would have been careful, under those imperative orders, to have done as much at that time, for the reason that Major-General McDowell knew his orders and was directly behind him and was witnessing his movements, and there was no possibility, so long as Major-General McDowell was there, for any evasion.

GENERAL M'DOWELL'S ORDERS TO PETITIONER.

It is a singular and important fact, in the consideration of this case, that the petitioner himself has, on several different occasions, deliberately made statements concerning the movements that we are now considering which cannot be reconciled under any possible state of facts. What the petitioner has said as to the interview he had at the front with Major-General McDowell will be found to contain many contradictions. General *McDowell's* evidence on that subject before the court which tried the petitioner is as follows (G. C. M. Record, p. 84):

Q. Will you state fully what occurred in that conference? [The one above referred to.]—A. On passing the head of General Porter's column, which was on the road I have before mentioned, General Porter was in advance of the head of his column—I think on a slight eminence, some of his staff near him. I rode up to him,
1495 and saw that he had the same order as myself—the joint order. Soon after my attention was directed to some skirmishing—I think some dropping shots in front of us. The country, in front of the position where General Porter was when I joined him, was open for several hundred yards, and was, as I supposed, by seeing the dust coming up above the trees, [near] the Warrenton turnpike, which was covered from view by woods. How deep those woods were I do not know. It did not seem at that time to be a great distance to that road—the Warrenton turnpike. I had an impression at the time that these skirmishers were engaged with some of the enemy near that road.

I rode with General Porter from the position he occupied eastward to the right. That is, the column being somewhat west of north, and I going east, made an angle with the line of troops on the road. The joint order of General Pope was discussed between us; the point to be held in view, of not going so far that we should not be able to get beyond Bull Run that night; that was one point. The road being blocked with General Porter's troops from where the head of his column was back to Bethlehem Church; the sound of battle, which seemed to be at its height on our right towards Groveton; the note of General Buford indicating the force that had passed through Gainesville, and, as he said, was moving towards Groveton, where the battle was going on, the dust ascending above the trees seeming to indicate that force to be not a great distance from the head of General Porter's column. I am speaking now of that force of the enemy referred to by General Buford and passing down the Warrenton turnpike towards Groveton. I understand this note of General Buford to refer to a force of the enemy.

The question with me was how, soonest, within the limit fixed by General Pope, this force of ours could be applied against the enemy. General Porter made a remark to me which showed me that he had no question but that the enemy was in his immediate front. I said to him: "*You put your force in here, and I will take mine up to the Sudley Springs road, on the left of the troops engaged at that point with the enemy,*" or words to that effect. I left General Porter with the belief and understanding that he would put his force in at that point. I moved back by the shortest road I could find to the head of my own troops, near Bethlehem Church, and immediately turned them up north on the Sudley Springs road to join General Reynolds' division, which belonged to my command, and which I had directed to co-operate with General Sigel in the movements he (General Sigel) was making at the time I left him in the morning. . .

* * * * * * *

Q. You have said that the accused made an observation to you which showed that he was satisfied that the enemy was in his immediate front; will you state what that observation was?—A. I do not know that I can repeat it exactly, and I do not know that the accused meant exactly what the remark might seem to imply. The observation was to this effect—putting his hand in the direction of the dust rising above the trees—"We cannot go in there anywhere without getting into a fight."

Q. What reply did you make to that remark?—A. I think to this effect: "That is what we came here for."

Q. Was or not the battle raging at that time?—A. The battle was raging on our right; that is, if you regard the line of the road from Bethlehem Church to Gainesville to be substantially northwest; the battle was raging to the right and east of that line at Groveton.

The expression which General McDowell testifies to as used by the petitioner as indicative of a reluctance to fight at that time is uncontradicted. We shall see, as we proceed in the consideration of the evidence adduced before this Board and before the court originally, that this significant expression was but the continuation of a remark that he had really made but a few minutes before to Colonel Marshall, when he sent him out in command of the skirmish line. The dust rising over the trees to their right and front, in the direction of Meadowville Lane, to which both the petitioner and General McDowell referred, we shall see was the dust then being raised by the hundred troopers of Col. T. L. Rosser's Fifth Virginia Cavalry of Maj. Gen. J. E. B. Stuart's cavalry division of Jackson's command, in order to delude and retard the advance of the petitioner's corps.

Capt. Mark J. Bunnell, then lieutenant of the Thirteenth New York Volunteer Infantry, Col. E. G. Marshall, says (Board's Record, p. 678) as follows [his regiment being the one petitioner deployed as skirmishers at Dawkins' Branch]:

Q. Do you know what the orders were under which they were deployed?—A. My recollection is that the regiment was halted there; I was lying on the grass at
1496 the time, and General Porter rode up and asked where the commander of the regiment was. I stated that he was a short distance from there, with a group of officers. He wanted to see him, and I think I called to an orderly and stated to him what I wanted. He called Colonel Marshall, and they came down within a few paces of where I was, and Colonel Marshall then received his orders to deploy his regiment as skirmishers in front.

Q. Did you hear the order?—A. I stood right there so I could hear.

Q. What were the orders that General Porter gave Colonel Marshall?—A. I could not hear all the conversation, but to deploy his regiment as skirmishers, as we were about ready to move out; *not to bring on a general engagement*, but the idea was that we had to do duty only as skirmishers.

* * * * * * *

Q. What could you see and hear during that day?—A. I saw some skirmishers from the opposite side—two or three cavalrymen I saw come out in a cornfield in front a little to the right—and heard firing.

Q. In which direction?—A. Soon after we were in position there was some firing in front, and a little to the right of the front.

Q. Artillery or infantry?—A. Artillery and some carbine firing—cavalry. That was the skirmish line, I judge.

Q. Could you see any enemy in your front?—A. Only those few cavalrymen that came out there.

Q. Do you know whether the enemy came down in force in your front that day; if so, when?—A. The impression was that there was some force there in the *latter part of the afternoon.* I did not see them; I could not see them.

Q. Was there any contest of any description in any other direction than directly in your front and right?—A. Judging from the firing, there was at the right.

Q. What was it; infantry, or artillery, or both?—A. Both.

Q. How near were you to that contest?—A. It would be almost impossible to tell.

Q. You could hear musketry distinctly?—A. Yes; very distinctly.

Q. Could you hear anything else indicating a contest or battle?—A. Late in the afternoon we could hear the huzzas and howling of the soldiers, apparently as though they were charging, and going backwards and forwards a number of times.

Q. How early in the afternoon did you hear those sounds of cheering, &c.?—A. I cannot tell you the time. I should judge it must have been towards five or six o'clock, and perhaps later, because the firing was kept up after dark.

Q. Relative to sunset, when did you first begin to hear those indications?—A. I should judge about sundown.

Q. Before that time could you hear any infantry and artillery firing; if so, when; before you heard the cheers?—A. Yes; there was some firing to our left [right?], but not to any great extent.

Q. How early in the day was that?—A. Along in the afternoon.

Q. The artillery firing?—A. Yes; some artillery firing soon after we took our position as skirmishers from perhaps one battery off a little to our right in front.

Q. Any other artillery firing in the distance?—A. Yes; to the right.

Cross-examination by Mr. CHOATE:

Q. How near were you to Colonel Marshall and General Porter when General Porter was giving to Marshall his orders?—A. About as near as I am to you.

Q. Did you hear in that position?—A. I think so; but perhaps not all.

Q. Do you recollect all the conversation?—A. I don't know as I do recollect all that passed, because I may not have heard all that passed.

* * * * * * *

Q. Did you see any captured scouts brought in?—A. No, sir.

1497 By the RECORDER:

Q. What was it that transpired that time when General Porter gave that command that especially impresses it upon your recollection?—A. It was this: That we were going to have, we supposed, a pretty hard battle; had talked of it from the time we were countermarched from Manassas Junction, as soldiers naturally will; and I remarked to some of the men afterwards what I heard as we were going down on the skirmish line; I remarked it because it was a sort of relief to me; like a great many soldiers, I did not care to go into a fight unless it was really necessary. That is why it impressed my memory.

By the PRESIDENT OF THE BOARD:

Q. You were shot the next day, I understand?—A. Yes, and laid on the field nine days.

From this uncontradicted evidence of a witness who heard the petitioner give these orders to Colonel Marshall not to bring on a general engagement, possibly within five, certainly not more than ten or fifteen minutes before the conversation of the petitioner with General McDowell, it is evident that the same thought was then running in his mind, of an intention or desire not to fight at that time under Major-General Pope. Major-General McDowell, *loyal* to the orders of his superior, anxious to see a union effected between the then separated wings of the army as soon as possible in consequence of the contest then going on to the right, after giving his orders to the petitioner, under the discretion given him by the joint order, moved immediately by the shortest line, as will be perceived on looking on the map, down to the location of his own corps, one division of which (King's under General Hatch) was between Bethlehem Church and the Sudley Springs road, on the Manassas and Gainesville road. Had the Manassas Gap Railroad from near Dawkins' Branch, where Major-General McDowell and the petitioner had made their observations, down to Bethlehem Church been rendered impassable by the open culverts which the petitioner's witness, Leachman, seemed to think would prevent infantry moving along (Board's Record, p. 141), and if the woods at that place had been so dense and impenetrable for foot-troops as the petitioner would have us believe, it would have been impossible for Major-General McDowell to have moved down there on the shortest line on horseback at a gallop or so rapidly as to leave his staff behind. The speed at which he moved, after a determination had been reached as to the next military movement, shows the anxiety he had to unite the two wings of the army as speedily as possible. Himself zealous and unsuspicious, he did not, at the time, attach to the remark of the petitioner, that by putting his forces in at the right he would get into a fight, that significance which, in view of its repetition in various forms, previous and subsequent, should properly be attached to it.

King's division, it will be noticed, was at this time quite 2½ miles from the head of the petitioner's column, then at Dawkins' Branch. To have deployed it to the left and brought it to the front there in line of battle would have been to separate the wings of the army still further, with less possibility of their being united. As the Sudley Springs road was the nearest for that division to move upon in order to come the quickest into position on the right of petitioner's corps, so as to be joined to the other divisions of Major-General McDowell's proper command, the quickest way to apply it in the contest then raging was by moving it in the very direction that Major-General McDowell took it.

As there had been much misrepresentation in the press and considerable misunderstanding in the public mind as to the responsibility for the various disasters in that campaign, and as General McDowell had been a prominent actor in it, he asked President Lincoln, after its conclusion,

1498 for a court of inquiry under the statute to examine into his entire conduct from its very beginning, and at the same time he invited all who knew anything of the transactions of that campaign in which his corps or command was concerned to come forward and give evidence on the subject.

This court sat a long time in Washington, in the same building and contemporaneously with the general court-martial that tried the petitioner. Major-General McDowell gave evidence in the case of the petitioner, because he was subpœnaed as a witness and had to do so. The petitioner volunteered evidence in the case of Major-General McDowell before the latter's court of inquiry, because General McDowell had given a general invitation to all to come forward. The petitioner having been duly sworn as a witness before General McDowell's court of inquiry, testified, and the following are extracts from his evidence:

PETITIONER'S TESTIMONY BEFORE GENERAL M'DOWELL'S COURT OF INQUIRY.

* * * * * * *

Q. by COURT. What order did General McDowell give, or what authority did he exercise over you, and in virtue of whose order? State fully and particularly.—A. General McDowell exercised authority over me in obedience to an order of General Pope's addressed jointly to General McDowell and me, and which I presume is in possession of the court. I have no copy of it. Our commands being united he necessarily came into the command under the Articles of War.

* * * * * * *

* * * General McDowell on arriving showed me the joint order, a copy of which I acknowledged having in my possession. An expression of opinion then given by him to the effect that that was no place to fight a battle and that I was too far out, which, taken in connection with the conversation, I considered an order, and stopped further progress towards Gainesville for a short time. General McDowell and I went to the right, which was rather to the north, with the view of seeing the character of the country, and with the idea of connecting, as that joint order required, with the troops on my right. But very few words passed between us, and I suggested, from the character of the country, that he should take King's division with him and form connection on the right of the timber, which was then on the left of Reynolds, or presumed to be Reynolds. He left me suddenly, not replying to a call from me to the effect, "What should I do?" and with no understanding on my part how I should be governed, I immediately returned to my command. On the way back, seeing the enemy gathering in my front, I sent an officer, Lieutenant-Colonel Locke, my chief of staff, to King's division, directing it to remain where it was for the present, and commenced moving my command towards Gainesville and one division to the right, or north of the road. I received an answer from General McDowell to remain where I was; he was going to the right and would take King with him. He did go, taking King's division, as I presumed, to take position on the left of Reynolds. I remained where I was. When General McDowell left me I did not know where he had gone. No troops were in sight, and I knew of the position of Reynolds and Sigel, who were on our right, merely by the sound of Sigel's cannon, and from information that day that Reynolds was in the vicinity of Groveton. The head of my corps was on the first stream after leaving Manassas Junction on the road to Gainesville, one division in the line of battle, or the most of it.

Q. Did you consider the expression of General McDowell, as stated by you, that you were too far to the front, and that this was no place to fight a battle, in the light of an order not to advance, but to resume your original position?—A. I did when King's division was taken from me, and as countermanding the first order of General Pope, under the authority given him by that joint order.

* * * * * * *

Q. by COURT. State, as far as you know, what followed, so far as the movements of General McDowell's troops and your own were concerned, and what orders you subsequently received from General McDowell.—A. General McDowell took King off to the right. I knew nothing further of his movements. I remained where I was until three o'clock next morning. A portion of the command left at daybreak. I received no orders whatever from General McDowell.

* * * * * * *

Q. by General McDowell. What did you understand to be the effect of General McDowell's conversation? Was it that you were to go no further in the direction of Gainesville than you then were?—A. The converation was in connection with
1499 moving over to the right, which necessarily would prevent an advance.

* * * * * * *

Q. by General McDOWELL. Witness speaks of the effect of General McDowell's message (as brought by Colonel Locke) to have been to cause him to remain in position at the place where General McDowell first saw him. How long did witness' troops continue in this position?—A. A portion of the command remained there till daybreak the following morning, and some till after daybreak. The most of Morell's division was on or near that ground all day.

Q. by General McDOWELL. Did witness conceive himself prohibited from marching or attempting to make any movement to the front, or to the right, or to the front and right?—A. By that direction or order, taken in connection with the joint order, I considered myself checked in advancing, especially taken in connection with the removal of King's division. I did not consider that I could move to the right, and I considered that General McDowell took King's division to form a connection on the right or to go to the right and form such a connection as was possible. I add further that I considered it impracticable to go to the right.

Q. by General McDOWELL. Did witness *attempt* to make any movement in either of the directions above named?—A. Not directly to the right. I did to the right and front, and when I received the last message from General McDowell to remain where I was I recalled it.

Q. by General McDOWELL. Did you make no attempt to go to the front or to the right and front after that message?—A. I made no attempt with any body of troops. I sent messengers through there to go to General Pope and to get information from the troops on the right.

Q. by General McDOWELL. After General McDowell left the witness, did the witness not know he was expected by General McDowell to move to the right or to the right and front?—A. I did not.

Q. by General McDOWELL. Witness speaks of having reported to General Pope. When did witness conceive himself as no longer under General McDowell?—A. My messages were addressed to General McDowell, I think, all of them. The messengers were directed to deliver them to General Pope if they saw or met him. I considered myself as limited in my operations under General McDowell's orders until I should receive directions from General Pope.

Q. by General McDOWELL. How long was witness and General McDowell together before they moved to the right with a view of seeing the character of the country?—A. I do not think that we were together more than four or five minutes; though I have no distinct recollection.

Q. by General McDOWELL. How long were they together after moving to the right?—A. It may have been ten or twelve minutes, perhaps longer.

Q. by General McDOWELL. Witness refers to some conversation between himself and General McDowell when they first met, which, taken in connection with an expression of opinion by General McDowell, witness considered an order. Can the witness state what that conversation was?—A. I only recollect the impression left upon my mind at the time, and merely a reference to the artillery contest going on far to our right.

Q. by General McDOWELL. Was not the joint order referred to in that conversation?—A. I have no recollection of it. It may have been referred to, because we went to the right, my belief is, to look at the country; but I do not recollect anything at all of the order being referred to.

Q. by General McDOWELL. Were not the remarks witness here states to have been made by General McDowell made with reference to the point in the joint order which required the troops not to go to a point from which they could not get behind Bull Run that night?—A. I think I have replied to that question by stating I do not recollect.

Q. by General McDOWELL. Does not the witness recollect asking General McDowell if he knew of any roads leading to the right or right and front of the head of witness' column?—A. I do not. Early in the day General McDowell loaned me a map and may have given more explanation with it. This is all the information I recollect of receiving, or having in my possession, of the country.

Q. by General McDOWELL. Does not the witness recollect of being made acquainted by General McDowell with information received by him from General Buford as
1500 to the force of the enemy which had passed through Gainesville?—A. I do.

Q. by General McDOWELL. When the witness and General McDowell moved to the right, "with a view of seeing the character of the country," what were the few words which witness states passed between them?—A. I have given some of the words already; that was, my suggestion to take King's division to the right. I have no recollection of any conversation or any words being used by me or him, except when reaching the railroad, remarking that the railroad was an obstacle—we having some little difficulty in getting over it with our horses.

Q. by General McDowell. Does the witness recollect nothing of what was said by General McDowell on that occasion, and of his telling the witness to take his troops across to the Warrenton road, and of General McDowell's intention to go back to take his troops up the Sudley Springs road?—A. To the best of my recollection nothing of the kind was conveyed to my mind.

From the petitioner's own statements made at this time, it is apparent that he perfectly understood what was meant by General McDowell when he arrived at the head of petitioner's column at Dawkins' Branch, and conversed with him about his position.

Two superserviceable witnesses, Walter S. Davis (Board's Record, p. 391) and Francis S. Earle (Board's Record, p. 410), appeared before this Board on petitioner's behalf. Davis says that General McDowell remarked to the petitioner when he arrived up the Manassas and Gainesville road at Dawkins' Branch, "Porter, you are too far out; move your troops back into these woods"; and Francis S. Earle says that he heard General McDowell say, "Porter, you are too far out," and make a motion with his hand back, and heard the word "back"; he did not hear him say "move your command further back." The latter witness, however, on the cross-examination (Board's Record, p. 416), said he did not see the enemy's skirmishers, even during the day; consequently, if he did not see any skirmishers during the day, he could not have understood at the time any remark that General McDowell might have made relative to the then position of the troops as having any reference to a battle directly in their front.

But whether or not Major-General McDowell said anything then as to their position to the petitioner, whatever he did say, as understood by the petitioner, appears to correspond exactly with the general plan of operations from the moment the "Gibbon" order was received in the morning; for on the question by General McDowell on his Court of Inquiry to the petitioner:

Q. What did you understand to be the effect of General McDowell's conversation; was it that you were to go no further in the direction of Gainesville than you then were?—A. The conversation was in connection with moving over to the right, which necessarily would prevent an advance. (Board's Record, p. 1011.)

The petitioner, therefore, perfectly understood whatever remark General McDowell made at the time, as appears by his own evidence; and that to pursue a march to the left of Thomas Nealon's with two regiments of skirmishers thrown out along the Manassas and Gainesville road, was not the movement to the *right* which General Pope intended they should make.

From the extracts just given from petitioner's evidence on General McDowell's Court of Inquiry, it will be seen that he then claimed:

1. That General McDowell exercised authority over him in obedience to an order of General Pope's addressed jointly to General McDowell and himself; and, further, that "our commands being united, he necessarily came into the command under the Articles of War."

2. That he considered himself limited in his operations
1501 under General McDowell's orders until he should receive directions from General Pope.

3. That General McDowell gave him no orders to take his troops to the right over to the Warrenton road—none to move to the front or right, or the right and front—but that he was checked by General McDowell in his intention to advance. And yet, as has just been noted, it was apparent when General McDowell got up to Dawkins' Branch it was understood by McDowell's own conversation with him that it was desired that the petitioner should go to the right and no longer make an advance.

4. He, therefore, claims to have been reduced to a state of inaction, so far as any order, direction, or instruction of General McDowell was concerned; and that this condition of enforced inaction continued till he should receive directions from General Pope.

We have seen, however, by Brigadier-General Griffin's testimony already cited, that while General McDowell was with petitioner at the front, the latter made a sort of effort to move to the right as directed.

PETITIONER'S REPLY OF MARCH, 1870, TO HON. Z. CHANDLER'S SPEECH IN THE UNITED STATES SENATE, FEBRUARY 21, 1870.

In this he said:

I have asserted, and ever shall assert, that General McDowell's order to me was to remain where I then was, while he would place King's division on my right and form the connection enjoined in the joint order. * * * * *

He further says in that reply:

* * * An immediate examination by us of the country towards Groveton showed the impracticability of doing *directly* what he desired, "placing King on my right and thus forming connection with the troops near Groveton"; and General McDowell left me without further instructions, but with the understanding that he would, by going *around* behind the woods separating us from Groveton, take King and Ricketts with him to join his command (Reynolds and Sigel), then at Groveton.

* * * * * * *

As General McDowell's order to me at that time alone prevented an immediate engagement of my troops, and resulted in prolonging the "inaction" which you condemn in me, I deem it proper to state these facts fully. * * * *

I have shown that my "inaction" up to the afternoon of the 29th was in strict obedience to orders.

I now meet your charge of inaction up to a later hour in that day.

After General McDowell left me (early afternoon 29th), and up to the time of General Pope's positive order of 4.30 p. m. (29th), reaching me 6.30 p. m., I was certainly as free to exercise my "discretion" under Pope's "joint order" as McDowell was.

Under the "joint order" he elected to divide our forces and march to another field, where it seems he arrived too late for his troops to be successfully used. Under it I elected to hold my position, neutralize double my force, and, in the enemy's opinion, saved by my action both Pope and McDowell from capture or total rout.

He further adds:

To show that my views are in no wise changed, and that I now raise no new issue, I quote from my defense before the court:

* * * * * * *

It is well that this alleged order, "put your troops in there," to me by General McDowell, does not so appear charged as specified, for now I will demonstrate that he did not then give me, and cannot be believed to have given me, any such order. * * * It would have been proclaimed forthwith at the headquarters of General Pope; it would have been blazoned among the charges and specifications side by side with the order itself, and, if true, it ought to have made the words of exculpation which General Pope uttered to me at Fairfax Court-House on the 2d September, four days afterwards, choke him as he spoke. But it is not true that General McDowell then, or at any time in that day, gave me any such orders, "to put my troops in there," or to do anything of the kind; and fortunate is it for General McDowell that it is not true, for if he had given me any such mandate to thrust my corps in one [over?] that broken ground between Jackson's right and the separate enemy massing in my front, the danger and disaster of
1502 such a movement would have been then and now upon his hands. I am glad that I can say that General McDowell is utterly in error upon this point, and is no way chargeable with such military blunder.

* * * * * * *

This narrative covers the period of time between noon of the 29th and the hour of Pope's order of 4.30 p. m. * * * * *

PETITIONER'S STATEMENT TO PRESIDENT GRANT.

The petitioner's appeal to the President, in June, 1869, "for a re-examination of the proceedings of the general court-martial in his case,"

he undertook to answer a statement which had been made to the express effect that he "did not even try to pass over the ground between him and the enemy on the 29th August, which he claimed as impassable, and also occupied by the right wing of the enemy."

Said he:

I shall show that the movement to pass over that ground was thwarted by General McDowell's orders to me, and fortunately it was so.

And also:

That even an effort to communicate by messengers failed from the nature of the country and the occupation of it by the enemy.

Reference to petitioner's "illustrative" maps in these closing arguments will show that over this alleged "broken ground" and impracticable or impassable country Longstreet subsequently moved his divisions in line of battle.

PETITIONER'S STATEMENT BEFORE THIS BOARD.

Again, before *this* Board, he has said (p. 31 statement):

The three objects to be accomplished under the joint order were: 1. To move towards Gainesville. 2. To establish communication with Heintzelman, Sigel, and Reno. 3. When this communication was established to halt.

But the troops should occupy a position from which they could reach Bull Run by night or the next morning. There was nothing in this order that contemplated a battle.

On the contrary, the command being to halt when communications were established, implied the contrary.

The joint order had been fulfilled as far as it could be complied with, when General McDowell rendered it impossible to move any further towards Gainesville with our joint forces by taking King's division with him.

After he left me, I was not only authorized but bound to exercise the discretion authorized in the joint order, holding in view "that the troops must occupy a position from which they can reach Bull Run to-night or by morning." The corps had already marched ten miles, and was then about eight miles from Bull Run.

* * * * * * *

While returning to my command, I saw the enemy's infantry coming to the railroad, and artillery moving to a slight elevation north of it.

Impressed as I was with the strength of the force in my front, I yet determined to make the effort to move towards Gainesville if it was at all feasible to do so.

Believing that then, if ever, before the enemy formed in too great strength so close to us, was the time to strike with our united forces, I determined, General McDowell having left me, to take the responsibility, and directing Morell to continue the deployment for an advance, sent my chief of staff, Colonel Locke, to instruct King not to go away. Sykes was coming up as rapidly as Morell's deployment permitted.

Colonel Locke soon returned and gave me the following message from General McDowell, whom he had found with King's division: "Give my compliments to General Porter, and say I am going to the right, and shall take King with me. He had better remain where he is, but, if necessary to fall back, he can do so on my left." (G. C. M. Record, p. 135.)

This message decided my course. Not that I regarded it as an order obligatory upon me—for I was now independent of General McDowell—but, in face of what we had the best reason to believe was a largely superior force to mine, General McDowell's moving away with King's force beyond all possible assistance to me, left me no alternative but to conform to the course he had adopted, because I was too weak to make an effective attack.

1503 These deliberate statements of petitioner, it will be perceived, are irreconcilable, for in one he says substantially that after McDowell left him and up to receipt of the 4.30 p. m. order he was certainly as free to exercise his discretion under Pope's joint order as McDowell was, and that he *did do so;* in the other he says that a movement to the right was thwarted by General McDowell's orders; and yet it appears he felt it incumbent on him during that day to report to McDowell that

he had undertaken to do the very thing he says McDowell thwarted. (See dispatches Nos. 28 and 29, in petitioner's opening statement.)

[Dispatch No. 28.]

[Original not dated.] AUGUST 29, 1862.

Gen. MORELL: Push over to the aid of Sigel and strike in his rear. If you reach a road up which King is moving, and he has got ahead of you, let him pass, but see if you cannot give help to Sigel.

If you find him retiring, move back towards Manassas, and should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right as you return.

F. J. PORTER, *Maj. Genl.*

Look to the points of the compass for Manassas.

Of course, if the petitioner had been up to the front himself with Major-General Morell at that time instead of $2\frac{5}{8}$ miles to the rear at the forks of the Manassas and Gainesville and Sudley Springs road, no *written* order would have been necessary. That written order was evidently sent after petitioner had retired to the rear, and after General McDowell had gone, Morell being left at the front near Dawkins' Branch. This petitioner has stated that he himself previously sent Lieutenant-Colonel Locke, his adjutant-general, back to General McDowell on the road (that is before he himself went back beyond Bethlehem Church), and General McDowell sent him up word that he was going to take King's division away, and for him to remain where he was. Nevertheless, we see that this petitioner *did* send Morell an order to "push over to the aid of Sigel and strike in his rear"—the very route and direction that he has attempted to make us believe was so impracticable. If, when he was with General McDowell to the right of the "Manassas and Gainesville" dirt road near Dawkins' Branch, he discovered, as he says he did, that the route over towards the Warrenton pike was impracticable (petitioner's opening statement, p. 31), why did he, from his field headquarters $2\frac{5}{8}$ miles to the rear of Dawkins' Branch, if he had any orders from General McDowell to remain where he was, send that order to Morell to go over to the aid of Sigel, who was then out on this line north of the latter in the vicinity of Groveton?

[Dispatch No. 29.]

AUGUST 29, 1862.

Generals MCDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force.

I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back? I will communicate with you.

F. J. PORTER, *Maj. Genl.*

1504 RELATIONS OF THE PETITIONER TO GENERAL M'DOWELL AS TO COMMAND ON THE 29TH AUGUST.

It will be of interest to note petitioner's several statements touching the relations as to command, and as to the responsibility, in connection with General McDowell.

In his first statement, made under oath before the court of inquiry within a few weeks after the occurrences in question, being asked:

When did he conceive himself no longer under General McDowell?

Said:

My messages were addressed to General McDowell, I think all of them. The messengers were directed to deliver them to General Pope, if they saw or met him. I considered myself as limited in my operations under General McDowell's orders until I should receive directions from General Pope.

Seven years after, in his appeal to the President, he speaks of having recalled Morell's division to its former position under McDowell's "reiterated order"—an order he claims to have received *after McDowell had left him.*

A year later, his view of his relations to General McDowell were that—

After General McDowell left me (early afternoon, 29th), and up to the time of General Pope's positive order of 4.30 p. m. (29th), reaching me 6.30 p. m., I was certainly as free to exercise my "discretion" under Pope's "joint order" as McDowell was.

Under the "joint order" he elected to divide our forces and march to another field.

* * * * * * *

Under it I elected to hold my position.

(Yet, with strange inconsistency, he speaks of receiving a message from McDowell, after the latter had left him, as one not to be disregarded, and which he claims to have obeyed.)

And (after the lapse of another eight years) in his late statement before this Board he states, in reference to the message he says he received, that McDowell was going to the right with King:

This message decided my course. *Not that I regarded it as an order obligatory on me, for I was now independent of General McDowell.*

So it appears that, in 1862–'63, he prefers that it should be held that the acts and omissions of the 29th were due to McDowell's orders to him. But in 1870 and 1878, having in the mean time seen that this position was not tenable—not tenable from the fact that it had been shown he had, during the day, given abundant proof he did not feel himself forced to a state of inaction—he shifts his ground. He no longer claims that it was General McDowell's *orders* to him, for after McDowell left him he had been free to act—was *independent of him.* He now holds that it was McDowell's *act* in taking King to the right which restrained him. This act having prevented his doing what he claimed he desired to do—engage the enemy in the direction of Gainesville; or do, even had the ground permitted it, as McDowell swears he had directed him to do, engage the enemy in the direction of Groveton, viz, to the right and front of that place.

But this very act, which petitioner alleges as the cause of paralysis on his part, and which he and his defenders have condemned as unwise, is one he states in 1862–'63, under oath, to *have been done at his own suggestion.*

It will be seen from his testimony before the court of inquiry that, in recounting what passed between McDowell and himself, after the second meeting at the head of his column, petitioner testified as follows:

General McDowell and I went to the right, which was rather to the north, with the view of seeing the character of the country, and with the idea of connecting, as
1505 that joint order required, with the troops on my right. But very few words passed between us, and *I suggested*, from the character of the country, *that he should take King's division with him and form connection on the right* of the timber, which was then on the left of Reynolds, or presumed to be Reynolds.

And in his reply to Hon. Zachariah Chandler, he says:

* * * And General McDowell left me without further instructions, but *with the understanding* that he would, by going *around* behind the woods separating us from Groveton, take King and Ricketts with him to join his command (Reynolds and Sigel) at Groveton.

In connection with this march of King's division, and in view of petitioner's claim that while McDowell was with him he was subject to his orders, and after he left him he was independent of him, it is unaccountable that—after McDowell had left him with, as petitioner says, the understanding that he was to take King and Ricketts around behind the woods to join the troops at Groveton—petitioner should almost immediately have sent *direct* to a division, under McDowell's immediate command, orders in contravention of those he admits he knew McDowell himself was to give it!

PETITIONER'S SWORN STATEMENT AND DISPATCHES CONTRASTED IN RELATION TO GENERAL M'DOWELL'S ORDER.

If there is one thing more than another which the petitioner here claims with constant and unvarying pertinacity and vehemence, it is that when General McDowell left him he had given him no orders to go into action with his troops, and thereafter that he gave him none. He was asked, when a witness, among other questions to the same end:

If he did attempt to make any movement in either of the directions named? ["To the front or right, or to the front and right."]

He said:

Not directly to the right; I did to the right and front, and when I received the last message from General McDowell to remain where I was, I recalled it.

He was then asked:

Did you make no attempt to go to the front, or to the right and front, after that message?

And said:

I made no attempt with any body of troops.

He was further asked:

After General McDowell left the witness did the witness not know he was expected by General McDowell to move to the right, or right and front?

And said:

I did not.

In his defense before his own court-martial he is still more emphatic, and in speaking of the period of time from noon on the 29th to the hour of General Pope's order of 4.30 p. m., says:

But it is not true that General McDowell then, or at any time during that day, gave me any such orders "to put my troops in there" or to do anything of the kind; and fortunate is it for General McDowell that it is not true, for if he had given me any such mandate to thrust my corps in over that broken ground, between Jackson's right and the separate enemy massing in my front, the danger and disaster of such a movement would have been then and now upon his hands. I am glad that General McDowell is utterly in error upon this point, and is in no way chargeable with such fatal military blunder.

1506 But in his statement before this Board the petitioner publishes two of his dispatches of the 29th (p. 35), numbered Nos. 28 and 29. In the first he orders General Morell (commanding the advanced division of his corps) to—

Push over to the aid of Sigel and strike in his rear.

In the second, addressed to Generals McDowell and King, he says:

I found it impossible to communicate by crossing the woods to Groveton. * * *

Communication, we must recollect, was by the joint order directed to be established by General Pope between Generals Porter and McDowell and the left of the main army, where Brig. Gen. John F. Reynolds was.

RECENTLY DISCOVERED DISPATCHES.

General McDowell swore he ordered petitioner "to put his troops in there." The latter denied it, but these dispatches just cited show, even in petitioner's own statement to this Board, *that he knew it was expected of him by McDowell;* and now we come to the consideration of the *newly-discovered dispatches*, on the same subject, of great importance, viz, one addressed to General McDowell dated 29th August, 6 p. m., which says:

Failed in getting Morell over to you. After wandering about the woods for time I withdrew him, and while doing to artillery opened on us. * * * *

Another, addressed to General McDowell or King, says:

I have been wandering over the woods and failed to get a communication to you.
* * * * * * *

In the third, addressed to General McDowell, he says:

The firing on my right has so far retired that, as I cannot advance and *have failed to get over to you except by the route taken by King*, I shall withdraw to Manassas. * * *

It will be seen from some of the foregoing extracts, taken in connection with the "sketch of 2d Manassas, August 29, 1862," published in petitioner's statement before this Board, that petitioner, after receiving McDowell's last message, deliberately reported that he had made an attempt, or attempts, of some kind or other, to move some of his troops over the country to the United States forces at or near Groveton; though, when especially interrogated with respect thereto by General McDowell, while on the witness-stand, he denied having done so.

They show, as before stated, that he did not feel himself held to a state of *inaction* by any order General McDowell gave him; and they also show that what he says he attempted was in the exact direction of what McDowell states he ordered him to do, to wit:

To put his troops in there. [In the direction of the Warrenton pike and Meadowville Lane.]

In view of petitioner's claim, that as this attempt to move Morell over to the Warrenton pike, "to aid Sigel," or "over to McDowell," was made after the latter had left him, he had then become independent of McDowell, "free to exercise his own discretion," and, in view of petitioner's most emphatic declaration, made in his defense before his court in 1863, and repeated as emphatically in 1870, that any such movement would, in his judgment, have been a "fatal military blunder," involving disaster, *it is not only an obvious inference but an inevitable conclusion that he must have been acting under the constraint of some superior authority; that he would not merely of his own motion have involved his troops in the consequences of, as he states it, "a fatal military blunder."*

1507 And as, during this time, there was no authority acting upon him but that of Pope, and McDowell, during the time the latter was with him, and as he then received no orders from Pope, *he must have acted, in the particular in question, under the order McDowell gave him before they parted and while he was still subject to his control.*

Therefore, in the assertion by General McDowell, that before he left petitioner for the last time on the 29th August, he did order him *to put his troops in there* [in the direction of Warrenton pike], where the dust was rising, and in the denial by petitioner that McDowell gave him any such order, it is petitioner's memory which is in fault.

There are some interesting bits of confirmatory evidence to Major-General McDowell's as to the orders he gave petitioner at the Manassas Gap Railroad from petitioner's own witnesses.

Thus when the latter during the afternoon sent a dispatch from his remote headquarters 2⅝ miles to the rear to General Morell (dispatch No. 31) to put his division back in the bushes, Morell swears (Board's Record, p. 422) that he had two brigades deployed on the ridge facing Dawkins' Branch in front of the bushes, and that they were not put back until the receipt of that dispatch.

It is thus plain that General McDowell when he arrived at Dawkins' Branch, before riding to the right, never gave any such order "to put the division back in the woods" as testified to by the witnesses Earle and Davis, or the petitioner would have done it then and there instead of deploying on the ridge.

This witness's testimony is noticeable (Board's Record, p. 425):

Q. In your former testimony, as well as in that of many other witnesses, there are descriptions of movements, of operations of your troops that day to and fro, backwards and forwards, on the ground in the neighborhood of Dawkins' Branch; you recollect that?—A. Yes, sir.

Q. Will you please state to the Board what was the general object of such movement?—A. Do you mean from the time we first arrived there?

Q. Yes; not in detail, but in general.—A. While we were getting into line, General McDowell joined General Porter, and very soon they rode off to the right. General Porter returned and directed me to move my command to the right. McDowell and Porter went off in this direction [east] and passed over a corn-field until they came to heavy timbered land. We followedclose behind them; they seemed to have examined the timber and found that it was impracticable. It looked so to me, also. General Porter returned, and ordered me to return to my former position.

Q. Returned from his ride with General McDowell?—A. Yes, sir; about off in this direction [near Five Forks].

Q. Across the railroad?—A. Across the railroad. Part of my command then came back and immediately resumed position on the ridge. I did not go far enough to extend my whole division. Hazlett's battery did not move at all. As we were coming back, moving by the flank, and were passing by Hazlett's battery, a section of the enemy's artillery opened fire. As soon as the infantry cleared the battery, Hazlett replied; then this section of artillery moved off some distance to the right on higher ground and commenced firing again. We then remained in that position until I received an order from General Porter to put the men under cover. Then I put them in the pine bushes.

This witness in his eagerness assumes that both General McDowell and the petitioner examined the timber to their right rear, at their backs, towards *Five Forks*, and found it impracticable. Apparently *retreat* instead of advance was what was in his mind, for he did not know that McDowell in the few minutes' conversation there with petitioner was discussing how to move to the right and front the quickest in order to apply where the dust was rising the full force at their joint disposal.

Capt. *George Monteith*, petitioner's then aide-de-camp, who was with him, saw this "heavy cloud of dust that was rising on the Warrenton pike." (Board's Record, p. 312.)

1508 Lieut. *Stephen M. Weld*, another of petitioner's then aides-de-camp, says (Board's Record, p. 263) that after General McDowell and petitioner had been there a very short time, off to the right of the railroad, General McDowell—

turned off to the left and went to Bethlehem Church, and General Porter came back the same way he came in, recrossed the railroad, and joined his corps.

It is plain that petitioner's staff knew where McDowell went, as the railroad was a short cut to Bethlehem Church. If the woods were as impenetrable as Morell then says he thought them to be, McDowell could not go on horseback down that railroad to any point but Bethlehem Church.

Nevertheless, we find petitioner, when a witness before McDowell's court of inquiry, swearing as follows: "When General McDowell left

me I did not know where he had gone." In his opening statement, however, before this Board he has said (p. 31):

> General McDowell decided to take his divisions then on the road immediately in my rear and to turn back and go by the Sudley Springs road to Groveton to place them on the left of the troops at that place. * * * After he left me, &c.

It is here apparent that a decision *was* reached at the Manassas Gap Railroad and that McDowell moved off by the shortest road to do his part.

Which is to be believed, Weld or petitioner, as to the fact cited, is for those who read or hear this argument to determine for themselves.

Petitioner's evidence as a witness, when he appears against McDowell, is opposed to his own witnesses and own knowledge in his own case as to McDowell's intentions and movements, for in the first he swore that when General McDowell left him he, petitioner, "did not know where he had gone," while in his reply to the Hon. Zachariah Chandler he, petitioner, admits that General McDowell left him only after an explicit "understanding" that he, McDowell, should do the very thing he did do. Petitioner also, in his opening statement before this Board, further admits, as we have seen, that while he and General McDowell were together at the railroad, the latter came to a *decision* as to the mode of putting their corps in.

Another confirmatory bit of evidence as to what McDowell said when at the front of petitioner's column is found in that of Brigadier-General *Butterfield*, another of accused's witnesses.

Petitioner had ordered him with his brigade (Board's Record, p. 462) to cross the railroad and strike between Groveton and Gainesville so as to cover the dirt road which ran to the latter place to the left of Thomas Nealon's.

This, it will be observed, was a continuation of the march in a direction from Dawkins' Branch not contemplated by petitioner's orders, which were to go up by the road to the right which King came down on.

While going out on this movement General McDowell, having arrived at Dawkins' Branch, witnessed the movement, and then, having ridden towards the Manassas Gap Railroad with petitioner, Butterfield's brigade was withdrawn, and the latter significantly says: "*We were then moved a little farther to the right;* then returned to the left."

So long as General McDowell was on the ground, in actual command for the time being, the petitioner had to make pretense of obeying; but the moment McDowell departed, his reluctant brigadiers find a few pine bushes in their movement to the right (see Griffin's testimony, G. C. M. Record, p. 165), halt, make "*no reconnaissance whatever*," and are ordered by petitioner to move back again.

Thus, through this long summer afternoon, with the sound of
1509 the battle in his ears, and while thousands were offering themselves willing sacrifices to their country's cause, the petitioner, with his headquarters placed 2⅝ miles to the rear of his column (see his opening statement, p. 40), where he cannot possibly take instant advantage of any opportunity either for connecting with the right or for moving into action, remains inactive, and holds his gallant corps from going to the aid of their comrades.

If, indeed, overwhelming numbers had been on his front ready and eager to attack, as he now pretends, the indifference which would have permitted him to remain continuously so far to the rear is nothing short of criminal.

If, as has been shown, he knew that Reynolds' division, of three brigades, comprising thirteen regiments and four batteries, was operating

on his (petitioner's) right (petitioner's opening statement, p. 31), and on petitioner's assumption of locations operating *directly* against Longstreet, facing him, then no assumed 25,000 men in that Confederate general's command should have prevented petitioner from pushing in with what he terms his own 9,000 (?) men on the right flank of that Confederate force. We will see that the petitioner's own forces were very much larger, by the official record, than what he undertakes in his opening statement to put them.

Had petitioner *pushed into action*, as he should have done, even on his own assumptions of positions and force under Longstreet, his own corps and Reynolds' division, with Schenck's division (Stahel's and McLean's brigades) of Sigel's corps and Stevens's brigade (Reno's division of Burnside's corps), all of which were deployed in line on Reynolds' right *south* of the turnpike, would have, without the assistance of King or Ricketts, quite equaled the whole rebel co-operating force, and left Jackson's exhausted and anxious troops to contend alone against the remainder of General Pope's army.

This is even on petitioner's present assumption that Longstreet had 25,000 men, at that time, present on the field.

According to the latter's statements here, two brigades (of Hood's division) were always *north* of the turnpike, and for most of the time Wilcox's division also.

NATURE AND EXTENT OF PETITIONER'S OPERATIONS AFTER GENERAL M'DOWELL LEFT HIM.

Petitioner having received an order from General McDowell modifying the mode of execution of the joint order given by General Pope when McDowell was with him, and clothed with the necessary authority to give him a valid order, this order did not lose its force and validity after they parted, but was one which imposed duties on petitioner, for the due discharge of which he is to be held responsible till he can show it was either countermanded by superior authority, or that its execution was, or became, impossible.

As to the nature and extent of what was done by petitioner after McDowell left him, it is significant of how feeble and inconsequential it must have been, that, within a very short time afterward, *even the memory had passed away from his mind*, and he could not recollect under oath:

(1.) That he had ordered his leading division commander *to push on to the aid of Sigel;*

(2.) That he had informed McDowell at 6 p. m. that he had "*failed in getting Morell over*" *to him;*

(3.) That he had (at six o'clock) ordered Morell "*to push up two regiments, supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and* ATTACK *the party with the section of artillery opposed to you (him).*"

1510 For, when a witness on the court of inquiry being asked if, after the alleged return of Colonel Locke, he *attempted* even to make any movement "to the front or to the right, or to the front and right," he denied having done so; and, according to his version of the case in 1863, he simply continued in a state of inaction after McDowell left him.

To judge from his most recent statement, his principal object was not to make any attack on the enemy at all, but to conceal himself from him—to put everything out of sight—for he says to Morell (dispatch 30):

Come the same game over them they do over us, and *get your men out of sight.*

So it appears that it was more a game of hide and seek than one of attack that was contemplated or that was carried out. Petitioner had established himself personally near the forks of the Sudley Church and the Manassas and Gainesville road, which is, according to the map made up from the survey of last June, two miles and five-eighths behind the place where he was when joined by McDowell the second time, and where he had commenced deploying his leading division, with alleged thick woods between him and the head of his column or his partly deployed line. And it was from this place, so retired from the possible field of action, and from any chance of his knowing anything from his own observation, that he received Morell's reports and sent to him and to McDowell the dispatches heretofore referred to.

We shall see a little later in this argument that some of these reports of the petitioner to General McDowell that day had no foundation in fact.

PETITIONER'S RECOLLECTION IN 1863 OF HIS SECOND MEETING WITH GENERAL M'DOWELL AND HIS SUBSEQUENT STATEMENTS.

The petitioner has claimed in his opening statement here that he and General McDowell at their second meeting on the 29th at Dawkins' Branch discussed the joint order, conversed on the subject of the force reported* by Buford as belonging to Longstreet, yet his own testimony given immediately after his trial, when a witness on General McDowell's court of inquiry, is inconsistent with this modern recollection of their intercourse at that time.

Then he said as follows:

Q. (By General McDowell.) Witness refers to some conversation between himself and General McDowell when they first met which, taken in connection with an expression of opinion by General McDowell, witness considered an order; can the witness state what that conversation was?—A. I only recollect the impression left upon my mind at *the time, and merely a reference to the artillery contest going on* FAR TO OUR RIGHT.

Q. Was not the joint order referred to in that conversation?—A. *I have no recollection of it. It may have been referred to, because we went to the right, my belief is, to look at the country, but I do not recollect anything at all of the order being referred to.*

1511 Q. (By General McDowell.) Were not the remarks witness here states to have been made by General McDowell made with reference to the point in the joint order which required the troops not to go to a point from which they could not get behind Bull Run that night?—A. I think I have replied to the question by stating I do not recollect.

And with reference to their conversation when they rode to the right the petitioner testified that—

But very few words passed between us, and I suggested, from the character of the country, that he should take King's division with him and form connection on the right of the timber, which was then on the left of Reynolds, or presumed to be Reynolds.

* * *

It is evident, as just shown, that the petitioner knew he had been told by General McDowell to *act*, and act in support of the very movement he was making to come up on the left of Reynolds.

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*A reference to this report, which is below, will show that Buford did not state Longstreet's arrival, but merely mentioned that a certain force had passed Gainesville, without saying who commanded it or to whom it belonged.

"HEADQUARTERS CAVALRY BRIGADE—9.30 a. m.

"GENERAL RICKETTS: Seventeen regiments, one battery, 550 cavalry, passed through Gainesville three-quarters of an hour ago on the Centreville road. I think this division should join our forces now engaged, at once.

"JOHN BUFORD, *Brig. General.*

"Please forward this."

This is the dispatch General McDowell showed to petitioner at Dawkins' Branch. (G. C. M. Record, p. 84.)

And it is also evident that this petitioner's failure to get over to aid Sigel, or march over to McDowell, was not because he met with any obstacle in his march or any restraint from the enemy. He failed to get over, that is true. It is also true, and he himself furnished all the evidence, that he *failed* to *start*, while from the dispatches which have been introduced for the government he would have it inferred that he had attempted to do as it is claimed he was ordered to do.

He equally defends his not having acted at all. *In other words, the petitioner gives evidence of knowing he was to act, and of his determining not to act.*

ROUTE TAKEN BY GENERAL M'DOWELL AND PETITIONER TO THE RIGHT FROM THE MANASSAS AND GAINESVILLE ROAD.

Just here it is proper to indicate the direction taken by Major-General McDowell and petitioner when they moved to the right from the head of the latter's column after it halted on the Manassas and Gainesville road at Dawkins' Branch.

My belief is, from having been on the ground myself and from having examined it carefully last August, that those two corps commanders followed the direction of the branch—on its easterly side, not exactly where a road is delineated on the map, but quite near it on the 180 contour, where there is a sort of road—just in front of the then bushes which are now woods.

On the westerly side of the branch the ground gradually rises, and Nealon's, Carrico's, and Britt's are easily seen from the 180 contour near the branch and just in front of the timber or bushes marked upon the map.

If General McDowell and the petitioner had ridden northerly towards the railroad on the 200 contour, as the latter would have us believe, they would have been in thick bushes and unable to have seen the open country to the west and northwest.

As the two watered their horses in a little stream, and as even Dawkins' Branch at that season of the year is so dry as to consist of but a few pools, the only point where they could readily have done so would have been between the railroad and James Nickerson's house, and more than likely in the branch itself, whose name was not then known to them.

Griffin's brigade was deployed on the ridge, and also moved along it across the railroad until some "little, thick, pine bushes" brought them to a halt.

Had they deployed or moved on the 200 contour, they would, from the first, have been concealed, if any credence whatever is to be given to the map used in this case, and petitioner's subsequent order to Morell to post all the head of his column in the bushes (opening statement, p. 95, No. 31) would have been needless.

There are but two points in the petitioner's case as to the 29th of August, which, despite the collateral issues raised in order to withdraw attention from the main facts, are really material.

The first is, whether he got any orders from General McDowell which held him to a state of inaction on the 29th of August, 1862.

The second, whether he ever received any order from Major-General Pope, later in the day, to move into action (4.30 order).

The last point will be discussed by itself.

It was testified to upon the original trial by Assistant Adjutant-General Locke, chief of staff (G. C. M. Record, p. 135), that immediately after General McDowell had left the petitioner over by the Manassas Gap Railroad, and the petitioner had returned to the head of his column on Dawkins' Branch, the latter sent him, Locke, to General *King* with directions to him, *King*, to remain where he was; and that he brought back orders from General McDowell to the petitioner for the petitioner to remain where he was. The court-martial that tried and convicted the petitioner had before it the full evidence of Lieutenant-Colonel Locke upon the subject, and undoubtedly gave it all the weight that it was justly entitled to. In the investigation before this Board an additional witness has been introduced upon this subject in the person of an orderly named Leipoldt (Board's Record, p. 56), who went to the Bethlehem Church with Colonel Locke after the petitioner got back to the head of Dawkins' Branch from the reconnaissance he and General McDowell had made to the right. When Major-General McDowell and the petitioner separated after the final interview near the Manassas Gap Railroad, it was in the belief and understanding on Major-General McDowell's part that the petitioner would, as soon as practicable, carry out his part of the programme agreed upon between them, and put his forces "in there," in the direction of the enemy on his right front towards the Warrenton pike where the dust was rising at the time in heavy columns (Colonel Rosser's brush-dragging). It will be observed, by reference to the map, that the point to which General McDowell rode with the petitioner from Dawkins' Branch on the Manassas Gap Railroad was the best point from which to ascertain any possible movement of the enemy; and that the nearer a person approached to where the head of the petitioner's column was, on the Manassas and Gainesville road, the less opportunity there was, on account of rising ground in front and trees, to determine where the enemy could be. In point of fact, at that time the two regiments, the Sixty-second Pennsylvania and Thirteenth New York, were shoved into the trees which lined the left-hand road towards Gainesville. The distance from the Manassas Gap Railroad to Dawkins' Branch and the Gainesville road is about half a mile and perfectly level on the ground over which the two general officers had moved with rapidity. The petitioner, as appears by his own sworn evidence in the McDowell court of inquiry, had suggested, at the time he and General McDowell were at the Manassas Gap Railroad, that the best means of carrying out the joint order and the quickest way to apply King's division in the action then going on, would be for General McDowell to take it up around by the Manassas and Sudley road, and come in with it north of the old Warrenton, Alexandria, and Washington road, on the left of Reynolds' division, then attached to McDowell's command and operating with Sigel. Therefore, General McDowell was galloping by a short cut down the Manassas Gap Railroad to Bethlehem Church, leaving his staff behind
1513 him from the rapidity of his movements, in consequence of his haste to perform his share in the operations and help General Pope's army, then fighting Jackson. The petitioner says that, in the five or six minutes' time it must have taken him to gallop back to the head of his own column, at Dawkins' Branch, on the Manassas and Gainesville road, he saw the enemy gathering in his front, which induced him to send Lieutenant-Colonel Locke with the remarkable message to which I have just referred. This statement that, in this brief and hasty ride back to his corps, he saw the enemy gathering in his front in such

force as to induce him to attempt to change the whole plan of operations that had been agreed upon not five minutes before, will be found, on considering the evidence of his own witnesses, to be based upon assumptions, not sustained by facts. Had he seen any enemy gathering upon his front from any quarter whatever, he would have brought, undoubtedly, some of his staff who were with him when he went with General McDowell, to testify as to the circumstances; and we know that that staff have been brought here, as well as before the original court that tried him, several times to give evidence on other points. They were, possibly, as much interested as he in knowing whether there was an enemy gathering in their front at the time. Certainly, if he had perceived any such thing he would have indicated it to them in some way. Riding with his back to the point from whence the dust was rising above the trees and with but a limited view on his right as he returned, in consequence of the woods where his own skirmishers were, it is apparent that he could not see that which he has asserted he did see. A glance at the map will show this.

There are some significant facts connected with this pretended message which must be referred to.

The division commanded by Brig. Gen. Rufus King, which had that morning been temporarily attached to the petitioner's command by General Pope's order, through Gibbon, comprised the brigades of Hatch, Gibbon, Doubleday, and Patrick; Brigadier-General Hatch being the ranking officer under the division commander.

On the evening before, in the action of that division on the Warrenton pike between Gainesville and Groveton with Jackson's command, it appears that Brigadier-General King was, according to the evidence of his assistant adjutant-general, *John A. Judson*, petitioner's witness (Board's Record, p. 103), in an ambulance sick; and that General Hatch was "practically in command." We have seen that on that morning of the 29th General Gibbon had given the petitioner an account of the action the night before. Now, when the petitioner's corps came along on the Manassas and Gainesville road, past the place where King's division was lying, the following took place, according to the evidence of the same witness (Judson), the petitioner at the time being at the head of the column, and Captain Judson, assistant adjutant-general, with his own division there stationary:

Q. Did you have any conversation with him (petitioner)?—A. I did.

Q. State what.—A. General Porter asked me where the commanding officer of those troops was. *I conducted him to General Hatch.*

Q. Had General McDowell at that time made his appearance?—A. I have no recollection of seeing General McDowell since the day before up until that time.

Q. Did you learn from General Porter or General Hatch, after their interview, what was to be done?—A. I learned from some source that "King's division" was to follow in the rear of General Porter's column.

1514 Thus it is apparent that petitioner gave his orders to Brigadier-General Hatch as commanding officer of King's division.

From further evidence of the witness (Board's Record, p. 105) it appears that General Hatch remained in command of the division all that day.

From the evidence of Brig. Gen. M. R. Patrick, another of the petitioner's witnesses (Board's Record, p. 187), we learn the following:

Q. Your brigade went alone when you got there? Had the other brigades got to Manassas Junction?—A. I cannot answer that, for it was quite a length of time before I saw the brigades or any other officer. I think General King was the first whom I saw. It was somewhere about eight or nine o'clock, while my commissariat and personal staff were hunting up supplies, &c. *General King rode over to my headquarters and told me that he was not fit to be in command; that he was going to Centreville, and came over*

to bid me good-by. I think Colonel Chandler, his adjutant-general, and I do not recollect who else, were with him at the time; he came to say good-by, and I do not know that I saw him after that.

Q. (By petitioner.) *What happened next after King's departure for Centreville?*—A. I was ordered, I think, by McDowell in person to move as soon as I could in the rear of General Porter, Porter having just passed through, or passing through near Manassas Junction, to go back to the scene of our fight the night previous.

Captain *Judson* (Board's Record, p. 113), in speaking of the precarious health of General King at that time, said that he rode in an ambulance from the Rappahannock up, that he did not see him on horseback, to his recollection, and that he was constantly attended by Dr. Pineo, his medical director. Therefore, when this petitioner got to Dawkins' Branch before General McDowell joined him, he was thoroughly and fully apprised of the fact that Brigadier-General Hatch was in command of King's division, and that General King had left for Manassas Junction and Centreville.

On the trial in 1862 we find the following testimony (by Lieutenant-Colonel *Locke*, petitioner's chief of staff, p. 133):

I was sent by General Porter with a message to General King. On finding General King, General McDowell was with him. I stated my message to General King, and General McDowell answered: "Give my compliments to General Porter, and say to him I am going to the right, and will take General King with me. I think he (General Porter) had better remain where he is, but if it is necessary for him to fall back, he can do so upon my left."

This must have been after twelve o'clock, because it was after General McDowell had left him for the last time at the front.

Q. What was the message you carried from General Porter to General King?—A. For him to remain where he was until further orders.

Q. Did you understand that General King was under the orders of General Porter?—A. I did.

Q. Did you deliver the message that General McDowell gave you for General Porter, to the general?—A. Yes, sir.

General *McDowell* testified as follows (G. C. M. Record, p. 87):

Q. Have you any recollection that after you left the accused on the 29th and took with you King's division, the accused sent a message to you requesting that the division should be permitted to stay with his command?—A. *I received no such message.*

Q. Will you say in consequence of a message or otherwise, you sent a message to the accused with your compliments, telling him that you were going to the right and should take King with you, and that he (the accused) should remain where he was for the present, and if he had to fall back to do so on your left?—A. I do not recollect.

Q. Are you able to say that you are certain that you did not send such a message?—A. That is my impression, that I did not.

1515 Brig. Gen. *Rufus King* testified as follows (G. C. M. Record, p. 212):

Q. You will remember it has been testified here that on the afternoon of the 29th August a message was borne from General Porter to you by one of his staff officers directing that your division should remain where it was, and that this message was communicated to you in the presence of General McDowell, who made a response to it. The question I wish you to answer is whether you remember any such message to have been sent to you?—A. I do not.

Q. Do you remember to have been with General McDowell on the afternoon of that day?—A. No, sir.

Q. It was also testified by the same witness, if you will remember, that in reply to the message General McDowell said: "I will take General King's division with me. Give my compliments to General Porter, and say to him that I think he better remain where he is." Do you remember to have heard any such message as that from General McDowell?—A. No, sir; I do not remember any circumstance of that kind to have taken place on *any* day.

Q. Do you think it possible that an interview of that kind between yourself and General McDowell, with a message of that kind communicated to you, and a response of that kind from General McDowell, could possibly have occurred, and have now totally escaped your recollection?—A. I do not.

It is to be carefully noticed that Locke in his evidence distinctly and deliberately said that he had seen General King and handed the message to General King, and so forth.

Now, it is incredible that if any such message had ever been delivered to General *King*, and such response sent to it by General McDowell in the presence of General *King*, that neither of these gentlemen remembered it. The court-martial proceedings in the case of petitioner took place in December, 1862, not quite four months after this alleged occurrence, and while the memories of the witnesses to the events of the 29th and 30th of the preceding August were still unimpaired. This message and the response to it would have been highly calculated to have made a deep impression on all the persons concerned in it, involving, as it would have done, a total change in the movements just agreed upon between the petitioner and McDowell.

General McDowell had just left petitioner, having given him an important order, which, if it had been obeyed, would have brought his forces in a brief time into collision with the enemy. When he left petitioner he (petitioner) was in the act of deploying a portion of his command with the apparent intention of moving forward to the attack. General McDowell had witnessed part of this movement, and had left the field with the understanding that his order to "put his force in there" would be obeyed. Before leaving, however, it was agreed between them that General McDowell should take King's division with him in his movement with his corps up the Sudley road, and had he, in so short a time as is alleged, heard the request made to General King "to remain where he was," it must have caused him considerable astonishment, and made on the instant an unpleasant impression on his mind. It would have suggested at once the complete disruption of his plans—plans which were made with the sound of battle in his ears. Is it credible, therefore, that he could have sent such a response to such a message when he must have thought petitioner should be at the time alleged in actual movement towards the enemy?

The orderly, Leipold (Board's Record, p. 56), testified as follows:

Q. When next did you see General McDowell?—A. I saw him later in the day.

Q. You did see him afterwards?—A. Yes. Later in the day General Locke
1516 asked me to accompany him. We went back on the same road we came in the morning, probably a mile or two. I saw General McDowell and some other person. They were standing at the side of the road, dismounted.

Q. About where were they?—A. I think near a church.

If that was all down, and there was nothing of it but a pile of bricks, as at the last minute has been sought to be shown here by the petitioner's witnesses, they could not have been standing near a "church."

Q. Near Bethlehem church?—A. I was under the impression there was some other name to the church.

* * * * * * *

Q. Did you see General Locke deliver him any message?—A. *I don't remember.* General Locke dismounted and I took his horse. He went over and *conversed* with the officers.

Q. Did you see General McDowell after that?—A. I don't think I saw him after that that day.

It will be perceived that this witness does not remember of any message being delivered by Colonel Locke to General McDowell; he merely went over and *conversed* with the officers.

Some unpleasant inquiries suggest themselves concerning the question whether there was any such message. We have seen that the petitioner knew that General King had gone to Centreville, and that Brigadier-General Hatch was in command of the division. Why, then, should he

have sent his assistant adjutant-general *to General King when he knew General King was no longer in command and sick?* Again, his assistant adjutant-general says positively that he found General King with General McDowell; and yet the petitioner's own witness, in conjunction with General King's evidence, shows that he was not there near Bethlehem church, but had already gone to Centreville. Again, if the enemy were gathering in his front, as he asserts, in such force as within five minutes after General McDowell left him it became necessary to change the entire plans that had been agreed upon, and it was desirable that he should move with his own corps and King's division instantly to the front, is it conceivable that his assistant adjutant-general would have dismounted, given his horse to an orderly, and walked over to converse with these officers?

There is another curious circumstance connected with this that requires to be noticed, and that is that Brig. Gen. M. R. Patrick in his evidence says that when General McDowell came back down this Manassas Gap Railroad, out *here*, and met Patrick, he had a conversation with him and told him that he was obliged to take him back—Patrick's being the nearest brigade of King's division towards Dawkins' Branch and nearest to petitioner's corps; and that General McDowell took Patrick's division across the country to the Sudley road. So that, if General Patrick is to be believed, General McDowell, having taken the last of his own brigades right over below F. M. Lewis' house in a northeasterly direction and moved north up to the Sudley Springs road, could not have been at Bethlehem church as testified to by Lieutenant-Colonel Locke, he, McDowell, having started off apparently *immediately* with Patrick's brigade. (Board's Record, p. 189.)

There is another curious circumstance connected with this which also requires to be noticed. Col. Edmund Schriver, brevet major-general, and inspector-general, U. S. A., was then colonel and chief of staff to the corps commanded by Major-General McDowell. For all who were under the command of that general officer, he was the official organ of communication; and if the petitioner, while General McDowell was exercising command over the two corps, had anything to communi-
1517 cate to General McDowell, that communication, according to the regulations governing the Army of the United States, would necessarily have passed through the hands of Colonel Schriver.

Colonel Schriver went up to Dawkins' Branch on the Manassas and Gainesville road with General McDowell, and rode to the right with him and the petitioner to the Manassas Gap Railroad, taking a few mounted orderlies with them. After the conversation between the petitioner and General McDowell and the latter had decided, as petitioner says in his opening statement, to act on the suggestion of the petitioner and take King's division, under Hatch, to the right, and had moved rapidly, at a gallop, down the Manassas Gap Railroad, Colonel Schriver was left with the escort and staff, and testifies as to his own future movements as follows (Board's Record, p. 832):

Q. State your rank in the Army.—A. Inspector-general and brevet major-general.

Q. What position did you hold on the 29th of August, 1862?—A. I was then on General McDowell's staff, when he commanded the Third Corps of the Army of Virginia.

Q. Do you recollect being with him on the 29th of August, at the head of General Porter's column, in the neighborhood of Dawkins' Branch?—A. I do.

Q. Where did you go then?—A. Went out to the right with the generals, whose object was, I believe, to make some observations, and then returned to the place whence we started.

Q. Where did General McDowell leave you, or did he not leave you?—A. He left somewhere to the east or to his right looking out toward the railroad, my recollection is.

Q. Which direction did he take when he left?—A. I think he went in a southerly direction, off to where his divisions were.

Q. Did you go with him?—A. No.

Q. Which direction did you take?—A. I came a little to the left and went by General Porter's headquarters, and then came down, if I recollect rightly, the road General McDowell went, through the woods; I did not go with him.

Q. You went down the Gainesville road, then?—A. Yes, sir.

Q. Did you go back with General Porter, or did you follow him?—A. I really cannot recollect that; I know we met again.

Q. What transpired at that time when you met him there?—A. I had a little conversation; I cannot exactly recollect what it was, except the general said or expressed the belief that he might become engaged with the enemy, and that he had no cavalrymen; he either then proposed, or I proposed, or at any rate the arrangement was made, that he should have half of General McDowell's escort that was with me; it was turned over, and I left. He wanted them to send messages.

Q. At that time where were the enemy?—A. I am sure I do not know.

Q. Did you notice any?—A. No; I did not look for any; it was not my business.

No cross-examination.

It is apparent from this evidence of Colonel Schriver that the petitioner must, immediately after General McDowell's departure, have galloped back to his column near Dawkins' Branch on the Manassas and Gainesville road, at a speed certainly that would have prevented him making any special observation in any direction; because Colonel Schriver follows immediately afterward, and has a conversation with him there.

It is to be noted from that conversation that the petitioner said he might become engaged with the enemy, and that he had no cavalrymen for messengers or orderlies; and Colonel Schriver leaves half of those of General McDowell that he had with him. The expression that he *might* become engaged with the enemy was something for the possible future—not an immediate engagement with the enemy that had

1518 been "gathering in his front" within five minutes. His remark evidently contemplated the carrying out of General McDowell's orders, because he borrows these cavalrymen for the express purpose of sending messages to General McDowell; and we shall see as we go along that he sent several to him during the day. Had he at that time found it necessary to change the plan that had been agreed upon by which he was to put his force "in there" to the right front where the dust was in consequence of the enemy "gathering in his front," *why he did not tell Colonel Schriver, who was the official organ of communication between him and General McDowell?* Why he did not call his attention to that which was, on his assumed state of facts, going to change the arrangement which General McDowell had just made at his own suggestion? As Colonel Schriver was going right down to where King's division was, if it had been necessary for that division to remain, Colonel Schriver would have been the proper party for the petitioner to make the request to for it to remain. He did not do so; and it is significant, further, that General Schriver did not notice any enemy "gathering" in the front. If there had been any serious demonstration in that direction he could not have failed to notice it. As it was, he did not. It is more than likely, in fact it has appeared in evidence in one form and another, that Lieutenant Colonel Locke, the petitioner's assistant adjutant-general and chief of staff, went backwards and forwards a number of times that day from Dawkins' Branch to Bethlehem church and the Sudley road (Board's Record, p. 299). He says so himself. The strength of his recollection has been exhibited between himself and other members of the petitioner's staff, relative to the efforts he himself made to remove obstructions on the road between Warrenton Junction and Bristoe on the morning of August 28, 1862. On cross-examination (Board's Record, p. 1042) he said his feelings are very strongly enlisted in behalf of the

petitioner. That, of itself, whether enlisted in favor of him or against him, should have no special effect in uncontradicted evidence. Assuming for the sake of argument that General McDowell sent this message:

> Give my compliments to General Porter and say that I am going to the right and will take General King's division with me, and that he had better remain where he is; if he has to fall back, to do so on my left.

It is inconceivable that, after having made an entire plan of proceeding in which the petitioner's corps was to have been put into action, he should direct him to remain inactive. There is nothing to show that Lieutenant-Colonel Locke saw any enemy "gathering" on petitioner's front in the five minutes' ride from the railroad to the head of the column, or that the petitioner ordered him to communicate any such fact to General King, or anything more than a direction to General King, who was then on his way to Centreville in an ambulance, to remain where he was, assuming him to have been in command of the division for the sake of the argument. On such a supposition to assert that General McDowell should order the petitioner to remain where he was and not do anything when a contest was actually taking place on the right, is an absurdity of which no one who knows that distinguished officer would ever believe him capable.

When General McDowell left the petitioner on the Manassas Gap Railroad, after having amended the joint order so far as he was concerned, as to the manner of execution under the discretion which had been given him by the major-general commanding the whole army, it may be assumed that he left the petitioner in absolute command of his own corps, and had no further power or authority to order his movements in any direc-
1519 tion. He only commanded the petitioner's corps by virtue of his seniority under the (old) sixty-second article of war, and while actually joined for and doing duty with them, and any direction or order which he might give from a distance, he not being in command of the army, and only a corps commander, would have amounted to nothing, and required no obedience, which the petitioner well knew from his own long service in the Army. Such a message as the petitioner on the original trial assumed was finally delivered to him from General McDowell, in the light of his, petitioner's, previous instructions to Colonel Marshall, not to bring on an engagement; and his remark to General McDowell, when the latter was on the Manassas Gap Railroad with him, that if he moved where McDowell ordered him he would get into a fight, would have well suited his views. *The court which tried him evidently believed that there was no such message and no such response.*

The petitioner himself has for another purpose said here that "the only positive order received by me [him] on the 29th I [he] tried to execute, but it was received too late for any result to be obtained" (page 62, Petitioner's opening statement).

It is particularly to be noticed from the evidence of General McDowell on the trial, which has been cited, that the petitioner claimed originally that the enemy was in his immediate front, and that General McDowell made up his mind upon such reports as the petitioner made to him at the time and upon what he himself could see from the best available point of observation, namely, near the Manassas Gap Railroad.

Several witnesses for the petitioner on the trial and before this Board have mentioned the fact of the capture of two or three scouts, so called—possible scouts—cavalrymen, by our cavalry. It has been sought on behalf of the petitioner to show that he was apprised of the presence of the divisions commanded by Major-General Longstreet in his front, because of the capture of these scouts, so called.

Lieutenant-Colonel Locke, chief of the staff of the petitioner, has undertaken to explain this with the same degree of recollection as in the other portions of his evidence, as follows (Board's Record, p. 301):

Direct examination:

Q. Were you present when two or three rebel scouts were brought in, in the morning, after you got up to Dawkins' Branch?—A. I was.

Q. Did you know or hear, at that time, whose men they were?—A. I know what one of them said.

Q. What was it?—A. He said they were Longstreet's men.

Q. Do you know what cavalry there were in General Porter's command on the 29th, or *what were these cavalry that brought in the scouts, and where he got them?*—A. *We picked them up on the road;* there were but few that we had. We were very short of cavalry.

It is to be noticed here incidentally, in reference to a matter hereafter to be discussed, that this witness admits that they had picked up cavalry on the road, namely, the Manassas and Gainesville road, and we shall see from the evidence of Capt. John P. Taylor that that cavalry which the petitioner had there was a squadron of the First Pennsylvania under Taylor that had come down on that very road from Gainesville that morning, reported to Morell, and was leading the division back again towards Gainesville. Had it been known or surmised by the petitioner that Captain Taylor and some of his men were to be brought here on behalf of the government for another purpose the question he asked his chief of staff would probably have been omitted, because it
1520 appears that since the evidence here of those who belonged to that squadron, the petitioner has sought to prove that there were no cavalry there.

First, by Major-General Morell, recalled (Board's Record, p. 968), who said he did not recollect, upon being questioned, seeing them, or hearing that they were there; and further remarked, "I cannot recall anything about it."

Second, by Capt. Augustus P. Martin, his chief of artillery, who was also a witness on the original trial for him, who, after testifying with a view to show that he was where he knew everything that was going on at the head of the petitioner's column that day at Dawkins' Branch, nevertheless did not know (Board's Record, p. 1131) of any other information coming in from the front than that of Colonel Marshall's Thirteenth New York Volunteers, and upon being questioned by the petitioner whether he noticed "any body" of Union cavalry of 50 or 70 men in the vicinity of the front that day, or anywhere thereabouts, answered nothing more than a few orderlies. Relative to the battery off to the right and front of the petitioner's column as to whose operations this witness testified quite minutely, he was obliged, on cross-examination, to make the following admissions:

Q. Do you know of any effort being made to take that battery that was towards your front during the day and fired upon you?—A. The enemy's battery?

Q. Yes.—A. I do not.

From the evidence of some of the witnesses for the petitioner, who were in the Confederate service, as well as from the evidence of other officers of that service, called on behalf of the government, it has been made manifest here that the only cavalry in those operations belonged to the division of Maj. Gen. J. E. B. Stuart, in the command of Major-General Jackson (Board's Record, pp. 174, 524, 526, 694); and that Longstreet had no cavalry whatever with him at that time. Part of the day Col. T. L. Rosser's regiment of Fifth Virginia Cavalry (Stuart's division) was picketed down near the front of the petitioner, and afterwards Brig. Gen. Beverly H. Robertson's brigade of cavalry, belonging

to the same command of *Jackson* (Board's Record, p. 173). These cavalry had met the advance of Major-General Longstreet's column between Haymarket, or in its neighborhood, and Gainesville, and had then moved off down to the right in order to be on the extreme right flank of the Confederate force, and was undoubtedly the cavalry reported by Brigadier-General Buford (G. C. M. Record, p. 84).

Such being the case, assuming that two or three cavalry scouts, or cavalrymen, were captured by our First Pennsylvania squadron of Morell's command, the scouts belonged to Jackson's command, had been with him on all his movements down to Bristoe Station and present at the destruction, at Manassas Junction, of the Union supplies, and then gone up by a night march to Centreville, Stone Church, and Groveton, and thence back in the direction of Gainesville. Therefore, on this state of facts, the scouts captured were not Longstreet's men; it is not probable that any of them stated that they were of Major-General Longstreet's command. The latter had no cavalry whatever (Board's Record, p. 74). Therefore, when the petitioner, on this record, has expressed a strong desire to ascertain the whereabouts of those three scouts, had he secured their attendance here they would have been of no possible advantage for the reason that they belonged to Jackson's command and not to Longstreet's. Had he deemed them material on his trial they could possibly then have been easily secured.

1521 That they were mounted cavalrymen was testified to by Brig. Gen. Charles Griffin, petitioner's witness on the trial in 1862 (G. C. M. Record, p. 165).

This petitioner, in his evidence before General McDowell's court of inquiry, swore that he knew from Brigadier-General Gibbon that the order which the latter brought from General Pope—

> Was to prevent the junction of the advancing enemy and Jackson's force, then near Groveton; and that the object was to strike the turnpike to Gainesville before the advancing column should arrive.—(Board's Record, p. 1009.)

He testified that General McDowell had seen *that* order, "And when he altered it, as I conceived he had the authority, I presumed he knew more fully than I did the plans of General Pope."

The petitioner's presumption was a *non sequitur*, illustrated by his presumption in attacking the reputations of the court that tried him and all concerned.

It is a difficult matter to follow this petitioner in all his many material contradictions of himself.

In this evidence, we see he states, as I have just quoted (Board's Record, p. 1009), that he conceived General McDowell had authority over him sufficient to alter General Pope's order received by the hand of General Gibbon that morning; yet the latter himself was produced by petitioner as a witness, so far as this point is concerned, to show indirectly that McDowell did not even claim to exercise any command over him until receipt of the "joint order" (Board's Record, p. 245), and in petitioner's closing arguments we find him insisting on the same theory, although he *knew* that while King's division of McDowell's corps was on the Manassas and Gainesville road, and McDowell himself was there awaiting arrival of Ricketts' division to put him in on the same line, the old sixty-second article of war provided for just such a contingency.

General McDowell himself testified on this subject on the original trial that when notified at Manassas Junction by petitioner that General Pope had directed petitioner to take King's division with him, he, Mc-

Dowell, was under some embarrassment at seeing one of his divisions going off under a junior, and that petitioner "mentioned to the effect that as I [McDowell] was the senior officer, I naturally and necessarily commanded the whole, his force as well as my own, and with that understanding the division followed after his corps on the road he was ordered to take * * ."—(G. C. M. Record, p. 82.)

Therefore, while McDowell *could* exercise command over both corps, if occasion required, he did not interfere as to the march conducted by petitioner, ostensibly up to the battle-field of the night before, until after the head of column had halted at Dawkins' Branch, he meanwhile remaining back on the road where he could communicate with Ricketts' division, then coming up from Bristoe.

Having received the joint order, he rode forward to communicate with petitioner. As it was issued to them *jointly*, it showed that it was the purpose of General Pope that they should act independently of each other, and each in direct subordination to himself; and General Pope testified that such was *his* intention.

"Under these circumstances," as was said by the Judge-Advocate-General in the able review he presented to President Lincoln under the latter's instructions (G. C. M. Record), "it may be well questioned whether under the sixty-second article of war General McDowell could continue the command he had assumed over their joint forces."

Whether or not McDowell was in command of both corps under the joint order, under the operation of the sixty-second article of war,
1522 is and was a question of *law* which was directly presented to President Lincoln for his consideration and decided by him, and his decision may be properly considered as final and conclusive.

Accepting, however, for argument, the view that under the "joint order" General McDowell necessarily commanded both corps while acting together, it is to be noted that the order said if any considerable advantages were to be gained by departing from it, it should not be strictly carried out. McDowell, therefore, had the right as joint commander to vary its terms—and his decision fixed the execution in the manner indicated. His decision, however, under a positive order of this character would be valid only as to the *way* of complying, not as to the primary military *end* to be obtained, viz, to unite the wings of the army then separated during a contest with the enemy.

Petitioner himself knew, as his statements and dispatches show, that no pretended order from McDowell to remain where he was, with an undeployed column stretching at least three miles to the rear, fulfilled in the slightest degree the purposes for which the joint order had been given, interpreted as it was by the *three* previous orders this petitioner had received that morning from General Pope.

They were all to push *forward* to fight the enemy.

Petitioner's own dispatches and reports during the day to McDowell and to his own division commander, Morell, "to push over to help Sigel," and that he "failed in getting Morell over," show that he knew McDowell never gave the improbable order he pretends he did, and that such an order, even had it been given, would have had no validity, because of its being in direct contravention of the letter and spirit of Pope's orders *to fight.*

One can but be amazed in considering the various excuses and pleas of this petitioner, that he should attempt to place on McDowell, who was *loyally* and anxiously striving to carry out General Pope's orders, the responsibility for their direct disobedience by himself.

Major-General McDowell's evidence, on cross-examination (Board's

Record, p. 791), throws additional light as to the object of his meeting petitioner at the head of the latter's column at Dawkins' Branch:

Q. What was the purpose you went up there for [to the front at Dawkins' Branch]?—A. I went up because we came to a halt, and because I was in great anxiety in reference to the firing that was going on to the right. I went up there to see the condition of affairs, to see what was to be done with this force of ours on the left; going up there I received this letter of Buford.

Q. While you were there, if I am rightly informed, you decided, under the latitude allowed you by the joint order of General Pope, that General Porter should put his troops in to the right of where the head of his column then was, and that you would take yours away from the road on which those two commands then lay, up the Sudley Springs road? * * * * *—A. Yes, sir.

Q. Did not you have any idea as to how far it was or how long it would take you?—A. I thought I could get my troops into action quicker that way than I could by bringing them up in the rear of General Porter's, because the road was blocked up with his corps. I was excessively anxious to join Reynolds.

Q. Was it not for the purpose of coming in on the left of Reynolds with both of your divisions?—A. I should have done so if left to myself.

Here, incidentally, permit me to allude to a point which is not material so far as the petitioner is concerned, but which has been raised according to the method of procedure on his part, as to the why and wherefore of the time General McDowell's corps, viz, King's division, under Hatch, and Ricketts' division, took to get up into the fight. Gen-
1523 eral McDowell before this Board answered this qustion (Board's Record, p. 817):

Q. Why did it take your troops so long as it did take them to get around into action that day?—A. Those troops had marched day and night without much food, without much rest, for so long a time that they were excessively tired; officers, men, and horses were all very tired. The rate of their advance was not fast; when they went up they were sent forward by me. I first found them halted. Do you mean on the evening of the 29th?

Q. Yes. It must have been about those hours.—A. They went up towards the left of Reynolds; they were recalled by order of General Pope back to the road upon which they started; and I think one or two brigades, by direct orders from him, were taken off in several directions. These marches and countermarches consumed considerable time before they were sent up the road in the evening to make the last attack, which last attack was made by the direct orders of General Pope.

* * * * * * *

Q. Did you not go to the right with your two divisions on that day because that was the direction, from the right in front, that the enemy were coming?—A. I went up there because there is where I heard a battle going on.

We find from the evidence of Col. *Timothy Sullivan*, of the Twenty-fourth New York Volunteers, King's division, a witness for the petitioner (Board Record, p. 98), that it took a couple of hours, may be two and a half hours, to get up towards the position where they finally went in. Bvt. Brig. Gen. *E. D. Fowler*, of Hatch's brigade, King's division, under Hatch, says that they arrived nearly at the Henry house hill, between it and the Chinn house, about 2 p. m., or between 1 and 3 (Board's Record, p. 548).

WHAT WAS THE CHARACTER OF THE ENEMY IN PETITIONER'S FRONT AT DAWKINS' BRANCH, AND DID HE ATTEMPT TO ASCERTAIN ITS STRENGTH?

His witness (Maj. *G. K. Warren*, Corps of Engineers) says (Board's Record, p. 18) that they were fired at by artillery somewhere about Carrico's, somewhat concealed. Could see mounted men, such as cavalrymen.

* * * * * * *

Q. If that battery had not been put in that position, would there have been any difficulty in crossing that open space in order to reach that ridge by Morell's division?—A. I regarded that artillery as only an indication. I should not have consid-

ered it alone as any obstacle at all. It might have been attached to cavalry and run away at the sight of a demonstration. But as an indication of what might be—it might be a whole line of battle along there.

Q. If you had been placed there with Morell's division in that way, as a military man, what, in your judgment, would have been your duty in the premises?—A. Of course I should have had to obey orders.

Q. Supposing you were there as he was, in a semi-independent character, at that moment of time, as far as that battery was concerned, what, in your judgment, would have been your duty in the premises?—A. I should have considered the battery of no account at all.

Q. You could have moved forward and taken it if it had not been well supported?—A. I suppose I could if *I had chosen to go that much out of my way.* I should not regard a section of artillery as being an object to divert me or attract me. (Pages 37, 38, B. R.)

* * * * * * *

Q. You have been asked by General Schofield what you would have done if you had had 30,000 men. Let me ask you whether, with not exceeding 10,000 men, you could have made an attack with any expectation of success?—A. From what I *now* know I am satisfied that I could not. The most that could have been done would have been to so far develop the force as to be satisfied whether it could be engaged or not. If you were satisfied that it was too many for you, it would be imprudent to do it.

1524 By the RECORDER:

Q. Do you know whether there was any such effort to develop it or not?—A. I do not, to my personal knowledge. (Board's Record, pp. 48, 49.)

* * * * * * *

Q. What was the character of the enemy you saw?—A. I saw enough of them to see that there was an enemy there. I didn't know how strong it was and could only have found out by some kind of a reconnaissance.

* * * * * * *

Q. You say that, in order to have gone along to the right of the Manassas and Gainesville road toward the left of General Pope's army, indicated by Reynolds' position, that you thought at first a demonstration should have been made off in this direction to the southwest of that road?—A. Yes.

Q. Was that done during that day?—A. Not that I know of. Will you repeat what I said?

Q. In order to have moved along in a northeasterly direction towards Dawkins' Branch, it would have been first necessary, in your judgment, to have pushed off a column to the left of the Manassas and Gainesville road?—A. Yes. What I said was this: that if I had been ordered to make a movement in that direction, I should have considered it necessary to have made a demonstration here and see what would be on my flank. If I could not shake them out of their position, I would not have exposed my flank by moving northeasterly.

Q. Would you know if such a demonstration had been made by Morell's division in your front, they being to the right of the Manassas and Gainesville road and you to the left?—A. I don't know what that demonstration should have been. A skirmish-line might have been sufficient.

Q. My question is, would you have known?—A. I know that he did make a skirmish-line demonstration, but of the nature of that I am not cognizant.

Q. In which direction did he send out those skirmishers?—A. As far as I know they moved to the front.

Q. Not in the direction that you in your judgment say the demonstration should have been made in order to develop the strength of the enemy?—A. I cannot say that, exactly. It was in the same direction; of course I don't know whether it would have been as far to the left as I would have made it.

Q. It would have been to the northeast of the Manassas and Gainesville road rather than to the south and west of it?—A. It would have been in the the direction of this road generally.

Q. Would you not have known if any demonstration had been made to the south and west of that road that day?—A. I think I would.

Q. Was any made to your recollection or knowledge?—A. No; I think there was not. (Board's Record, pp. 36 and 37.)

* * * * * * *

W. W. Blackford, captain of Confederate engineers, on Maj. Gen. J. E. B. Stuart's staff, called by government, testified as follows (Board's Record, p. 694):

Q. Then you followed the railroad down?—A. Then we followed it down in this direction somewhere. [Southeast.]

Q. Did you come to any point of observation?—A. We very soon opened communication with the cavalry videttes around *here* (near Hampton Cole's).

Q. Whose cavalry videttes were those?—A. Robertson's.

Q. Belonging to Jackson's command?—A. No, sir; Stuart's command of cavalry.

Q. Do you know when they had been put out there in observation?—A. No, sir; I could not make out what command it was hardly, but it must have been some of Robertson's.

Q. When did you first see the advance of the Federals?—A. Not long after we got out there. There were reports that they were advancing, and Stuart sent me out to verify the reports.

Q. State about the point you went to in order to get a view.—A. I went to every point I could see. I just rode to wherever I could get a view.

Q. Beyond Vessel's?—A. Yes; I went down on this side [south of Vessel's];
1525 then, I think, over this road [from Vessel's toward Dawkins' Branch]; and then came down by Carrico's. I examined it from every point of view that it was possible to get a view of it from. I had a very powerful pair of glasses that I could observe with. The main point to establish was whether it was infantry or dismounted cavalry.

Q. What did you observe?—A. As this was a powerful glass, I could tell by the bayonet-scabbards and the color of the trimmings whether it was cavalry or artillery.

Q. What did you see?—A. The head of the column then was just about making its appearance. I think they deployed on both sides of the Manassas and Gainesville road.

Q. What did you do?—A. I went back as soon as I ascertained that it was infantry.

Q. Did you come into any close proximity to any of these advancing parties?—A. As close as the skirmishers would let me. I drew their fire.

Q. Did you return it?—A. No, sir; I only had two or three men with me.

Q. Do you recollect just what took place?—A. I went back and reported to General Stuart.

* * * * * * *

Q. Do you know of any movement, during that day, of the corps that was on this Manassas and Gainesville road, beyond Dawkins' Branch?—A. No, sir.

Q. Was your position such that it would have fallen under your observation if there had been such a movement?—A. I think we would have been sent over there if there had been.

Beverly H. Robertson, then a Confederate brigadier-general in Major-General Stuart's cavalry division of Jackson's command (Board's Record, pp. 173, 174, 524, and 526), says that after Major-General Longstreet's command, or a portion of it at least, arrived on the field and finally deployed, he was placed on the enemy's extreme right, and had his skirmishers in front of Dawkins' Branch (Board's Record, pp. 175 and 181), with his brigade massed half a mile in rear in the woods.

He put his brigade as fully 2,500 men on the 29th August present under arms, this being additional to Fitzhugh Lee and Rosser's regiments of Stuart's division under Jackson.

It is curious to notice how this witness, who went from Jackson that morning to Haymarket, and Longstreet and Charles Marshall and other Confederates who came from beyond Haymarket that day, give large estimates as to the forces under their commands. In the consideration of such estimates and in any other matter where there may be a contradiction as to a fact, as this is a military case, the opinion *at the time* of the *Union* officer will be accepted in this argument in preference to that of the enemy, after stating each. Even petitioner's Confederate witnesses, on whom he has so much relied, do not agree in their estimate of the force under Longstreet.

Thus the latter (exclusive of Anderson's division, which did not arrive during the battle of the 29th) says (Board's Record, p. 72) that his divisions present, viz: Hood's, Kemper's, Wilcox's, and D. R. Jones', had each between 6,100 and 6,300 men; while C. M. Wilcox, one of his division commanders (p. 228), put his own force at between 5,000 and 5,500 men—nearly 5,500.

Therefore, assuming Longstreet's extreme estimate as correct, he had about 24,800 men (no cavalry) on the ground, while assuming Wilcox's estimate as correct, about 21,600 would have been the numbers; a difference in the four divisions of 3,200 men; enough for another division.

However, we are not left in much uncertainty as to the actual number which passed through Gainesville in a body at 8.45 a. m., because Brig. Gen. John Buford, U. S. volunteers, chief of cavalry, accused's witness on the trial—who saw this force pass through Gainesville—swore as to the "extent of their entire force" (G. C. M. Record, p. 188), that it consisted of "seventeen regiments of infantry, one battery of
1526 artillery, and about 500 cavalry"; that he "made a particular estimate," and thought the regiments would average 800 men; also that there were besides the organized force "some stragglers following."

This intelligent witness did not have to trust to a recollection of sixteen years through many vicissitudes of intermediate military service, but made his estimate and report *at the time* to Major-General McDowell. The latter received it as he went towards petitioner's head of column at Dawkins' Branch and showed it to him. Buford's estimate, it will be perceived, made Longstreet's force about 14,100 men, instead of the extreme computation of 24,800.

Major-General *Morell*, in a dispatch to petitioner (No. 35, Board's Record, p. 303), said in the afternoon, "No infantry in sight"; and his assistant adjutant-general, Earle (Board's Record, p. 419), *did not see the enemy's skirmishers that day.*

Lieut. *James Stevenson*, Thirteenth New York Volunteers (petitioner's witness), who came down *along the front* from the left of General Pope's army to his regiment on the skirmish line, bringing the regimental mail, says in the trial (G. C. M. Record, p. 201), that he judged the enemy that afternoon, whom he saw, to have been 12,000 or 15,000 strong; a fact, if fact it was, which came directly before the court that tried this petitioner.

This case must be considered, if at all, *in the light he then had*, based upon what he THEN KNEW OR BELIEVED WERE THE FACTS, *in connection with the character of the specific orders he was acting under.*

With every disposition to make his case appear as favorable to himself as possible—he having been on trial for his life—and with nothing to restrain him from estimating that separate force under Longstreet, the senior Confederate division commander, at as large a figure as would serve his purposes, this petitioner deliberately stated before the court that tried him, on the 10th January, 1863 (G. C. M. Record, p. 266), that this separate force was from *ten to fifteen thousand strong.*

This accords with the estimate of his own witness, Brigadier-General Buford, as to the number Major-General Longstreet brought to Jackson's assistance that day (29th August) as an *organized* force, divided into four divisions of three brigades each, and each brigade containing as an average three regiments, each about 375 strong.

This, it is to be understood, is considered a *very* liberal estimate of the number of men Longstreet brought to Jackson's assistance, exclusive of stragglers, that day.

When Longstreet's divisions did *finally* get into position, two of Hood's brigades were north of the Gainesville, Groveton, and Centreville turnpike, with Wilcox's division in support; and facing those south were Stevens's brigade of Reno's division, also Schenck's division of Sigel's corps, about 4,500 strong, and Reynolds' division of thirteen regiments and four batteries, besides petitioner's corps, on the right flank of Longstreet, enough to have overwhelmed this fragment of Lee's rebel army, had he loyally "pushed in."

Brevet Brig.-Gen. *Horace Bouton*, then captain Thirteenth New York

Volunteers, who was on the skirmish picket line front of petitioner's corps, testified as follows (Board's Record, p. 332):

Q. What force of the enemy did you perceive there?—A. All we could see were occasional skirmishers that we developed.

* * * * * * *

Q. In the morning when you were deployed and went into the woods, or to the edge of the woods, what was the apparent strength of the enemy's skirmishers?—A. They seemed to be fully the strength of ours. It was a regular skirmish-line deployed.
1527 We could only see them occasionally; we could not tell the number. There was no regular line except a line of skirmishers; there was no line of battle that we discovered.

* * * * * * *

Q. I would like you to fix as near as you can the earliest hour in the day when you heard any such movement or sound which indicated such a movement of troops, in the rear of the enemy's skirmish-line.—A. As we did not get in there until about noon, according to my impression it must have been somewhere *about the middle of the afternoon or a little after that.* We pressed forward immediately after deploying; and at that time was the first time that we developed the enemy. I suppose not more than half an hour would have elapsed from the time we halted to the time we made the advance and discovered the skirmishers.

This petitioner has heralded the testimony from *Confederate* sources as the "newly discovered testimony" which should show that he was justified in not attacking them under the orders he had for fear of destruction.

In my opening argument, which was purposely full in order to apprise petitioner of the principal points in the government case, I observed that "Confederate" testimony as to the *strength* and *position* of their own force was not "newly discovered" evidence of the kind that would be entitled to consideration in any court of justice having appellate authority, for the reason that subsequently acquired knowledge must be excluded in determining what was *then* known by the petitioner in connection with the orders he had.

The enemy might have had 50,000 men on his front, instead of the 25,000 he now asserts it was, as against the 10,000 or 15,000 he insisted it to have been when on his trial in January, 1863.

The prospect of a "repulse" in an attack, made under lawful orders, would be no excuse for failing to make it.

"Confederate" testimony, therefore, as to the numbers in his front on the 29th August, has nothing to do with the case in considering whether he did attack under his orders or did not attack. If he made *no vigorous efforts to develop and ascertain what force of the enemy was in front* of him, he cannot, even on the assumption that he had no orders to attack, justify, palliate, or excuse his fatal inaction on the 29th August, 1862.

To ascertain what he did do, the testimony of those who were at the front must be considered. His witness, General Morell, thus testified on cross-examination (Board's Record, p. 432):

Q. When did you first see the enemy?—A. I did not see them at all. Except that section of artillery, they were all in the woods [around Vessel's]. I believe those who were farther to the left could see something of them; but where I was I could not see them. I relied very much upon Colonel Marshall. He was an educated Army officer, and I had perfect confidence in him.

* * * * * * *

Q. The moment you heard a little skirmish in front you halted and began to deploy?—A. I did not hear the fighting. Colonel Marshall sent back word; then we halted immediately and began to deploy on the crest of the ridge.

* * * * * * *

Q. Then I understand you did not hear any skirmish-firing at all in your front?—A. I heard a few dropping shots, and the report came in immediately from Colonel Marshall; that is what really stopped me.

* * * * * * *

Q. Could you see the dust raised by the enemy advancing during the day?—A. I could see dust off on the left.

Q. They appeared to be coming in pretty much all the afternoon?—A. There was a cloud of dust in the direction of Gainesville.

Q. Did you understand they were coming up all the afternoon?—A. From Colonel Marshall's report I did, and I inferred so from the appearance of the country.

1528 Q. As soon as you heard the skirmish-line as you were marching along that road, do I understand you to say that you immediately began to deploy?—A. As soon as what?

Q. As soon as you heard the fire of your skirmishers?—A. Yes; as soon as we heard that Longstreet's skirmishers and ours had met we began immediately to deploy.

Q. How long afterwards was it before General Porter came up?—A. I think he was with me at the time.

Q. You deployed under his orders?—A. Under his orders.

It will be perceived that this witness assumes that *Longstreet's* skirmishers were in his front, which, in point of fact, from petitioner's own "Confederate" witnesses, we have seen was not the case. They were skirmishers from Stuart's cavalry division of Jackson's command.

Maj. *George Hyland, jr.*, Thirteenth New York Volunteers, the next in rank in his regiment to Colonel Marshall that day on petitioner's skirmish line, called by him, testified (Board's Record, p. 115) that petitioner came up to the head of column at Dawkins' Branch and requested Colonel Marshall *to find where the enemy were in front;* and he, witness, took the left wing of his regiment and deployed it as skirmishers. He then answered as follows:

Q. Where did you halt; what was the topography of the country?—A. The division halted on a hill, and I deployed my skirmishers directly to the front of that hill, and as we passed down at the bottom of the little valley there was a stream passed through it to our right; it was quite a swamp. I had to take the left of the line, as they were advancing a great deal faster than the right. As we came up the opposite side of the valley we fell in with the enemy's skirmishers at the edge of the timber. About the same instant there was a squadron of cavalry upon my right in a corn-field. I sent word back to General Griffin to send some shells into their position. He placed half a dozen shells in there, and dislodged them. We were skirmishing the balance of the afternoon with the enemy's skirmishers; sometimes they would drive us back a few rods, then we would regain our former position.

* * * * * * *

Q. What were the actions of Colonel Marshall, that you know of?—A. He came out to see me once or twice. He advanced to my left with one of my men. I didn't go with him; I staid with my command. He went out, and I think he reported to me there were cavalry there, but I didn't see them; I was not in a position where I could see them.

Q. What was the impression made upon your mind; that it was a large or a small force?—A. A very large force.

By the PRESIDENT OF THE BOARD:

Q. What arm or troops did those rebel skirmishers belong to?—A. I don't know. They were infantry, in the woods.

On the trial of petitioner, Major Hyland was then a witness in his behalf, and on the direct examination (G. C. M. Record, p. 174) answered as follows:

Q. (By accused.) Was there any enemy formed in your front during that time [viz· about 1 p. m. that day until daylight 30th August]?—A. There was.

Q. (By accused.) Do you know at what hour they commenced forming, or about what hour?—A. *They commenced forming between two and three* o'clock, I think.

This evidence will be found in entire harmony with the government view of this case.

This witness, "*judging from the columns of dust*" that he saw "coming from the same direction," stated as his conclusions to the court-martial that there were probably 10,000 troops in front of petitioner.

Capt. *Henry Gecke*, Thirteenth New York Volunteers, a witness for government (Board's Record, p. 668), was ordered out by Colonel Marshall,

1529 in command of the left wing of the regiment on the skirmish line, Major Hyland having command of all of the regiment which

went on this duty.. He has put the time when he went out later than it actually was. His evidence, however, as to what he could hear is confirmed by his colonel, Marshall. Captain Gecke testified as follows (Board's Record, p. 668):

Right before me was a piece of wood and an open corn-field between me and the woods. I remained and deployed my skirmish line outside of the ditch there. At the same time when I came there I saw skirmishers, dismounted cavalry, marching before me in that corn-field. My men fired at them and they fired over to us. Then they went back into the woods and I gave the command to cease firing. Then the adjutant of the regiment came up between four and five o'clock with an order to the commanding officer of the skirmish line. I stepped up, and he said I should find out immediately what was going on in the corner of the woods; so I took a sergeant and a file of men and went up there; and the sergeant went ahead and looked in that direction, and then we came down and reported to the adjutant that the enemy has been marching out of the woods, and that they were moving cannon and ammunition-wagons to form their proper companies, and turning to the left. A little while after this I heard a few shots fired over in that direction.

* * * * * * *

Q. When you went out with the skirmishers and deployed your men, what orders did you have?—A. I had no special order except to see what was going on. I saw no line formed on the left; no line on the right.

Q. When did you first observe the enemy coming down on your front?—A. That was about four o'clock.

Q. Up to that time what indications were there of an enemy in your front?—A. I should say I saw a few of a skirmish line moving through the corn-field into the other side of the wood.

Q. During that day did you see any artillery firing?—A. I heard artillery firing.

Q. In what direction did you hear it?—A. The fire of artillery that forenoon I heard on the front of us; in the afternoon on our right.

Q. What was the character of that artillery firing that you heard?—A. It commenced at five o'clock in the morning; then it was in the far distance. Then about eleven or twelve o'clock we heard it better; we heard heavier firing. Then between one and two o'clock there was no firing whatever. Then from about three o'clock and afterwards there was heavy artillery firing and musketry firing up to most nine o'clock at night, and yelling by the enemy and cheering by the Union men. We heard that off on our right.

Q. Did you at any time during that afternoon undertake to feel the enemy and find out what their strength was?—A. No; I only carried out the order I had.

Q. About what time in the day would you say you moved across Dawkins' Branch to go forward with your skirmishers?—A. About three o'clock.

Q. Did you know the position of the enemy after you got up on the skirmish line?—A. No; I didn't see no other part of the troops except this dismounted cavalry.

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Q. This yelling and cheering that you heard by the enemy and the Union troops, was that before or after you moved your skirmish line across Dawkins' Branch?—A. Afterwards.

Q. How long after?—A. That commenced about five o'clock or half past five, and kept on until darkness.

Q. The yelling and cheering that you heard was between five o'clock and sundown?

[The Confederate General R. E. Lee's official report of that action says that the battle continued until nine o'clock at night (Board's Record, p. 520).]

A. Up to nine o'clock at night.

Q. Did you make any report of that to anybody?—A. No.

1530 Q. Do you mean to say that you did not send any messages to Colonel Marshall at all that day?—A. No; except this one, because I was not so far off from them. They could hear all these things going on themselves.

Q. Then you could hear and he could hear?—A. He could hear the firing. It took me about ten minutes, more or less, to get there from my position back.

Sergeant *Ferdinand Mohle*, Thirteenth New York Volunteers (Board's Record, p. 676), a government witness, has stated as follows as to his position to the front:

A. I think we staid as skirmishers up towards night, and then we were withdrawn on to a hill. It is kind of rolling country here. I think it was hollow along that way and then it raised again.

Q. What did you see while you were on the skirmish line so far as the enemy was concerned?—A. Saw a couple of rebel pickets in front of us.

Q. Infantry or cavalry?—A. I could not say exactly; I guess it was dismounted cavalry.

Q. What other indications of an enemy did you see during the day; what enemy did you see in front of you?—A. I saw no enemy where I stood. I have just said it was a kind of hollow place where we went through and we could not see many of the enemy except a line of pickets; they were not very active. We exchanged a couple of shots, and I recollect a couple of cannon shots flew right over our line and came I guess from our rear—our own men—two or three shots.

Q. Was there any cannonading going on then?—A. There was.

Q. Where was that?—A. That was to our right.

Q. What was the character of it?—A. It was heavier towards evening than the time we went up there. We heard the noise more in the evening—the noise of artillery and cheering—than when we first came up there. But still firing was going on.

Q. When did the enemy come down in force on your front that day where you were?—A. What do you mean by the enemy; the line of pickets?

Q. Yes, or heavy force; did you see any heavier force in front of you?—A. I could not see any heavy force; I could hear more. I could hear moving; I did not know whether it was artillery or cavalry, but I heard some words, some commands.

Q. How late in the day was that?—A. It was in the evening; towards night, I guess.

Q. When you went out there on that line, did you hear those commands and movements?—A. I cannot remember; I did not hear any command that time; but there was a couple of shots exchanged between the pickets; and finally, I think, the rebel pickets went back a little, and word was brought to cease firing.

Q. Could you hear any musketry firing in the afternoon where you were and infantry firing?—A. Yes; I could hear that.

Q. How long in the afternoon did you hear infantry firing?—A. I cannot tell exactly when it commenced, but I could hear cannon firing when we were marching up there.

Q. After you got up there, was there any cannon firing?—A. There was cannon firing at intervals; it ceased sometimes, and toward night it went on pretty heavy.

Q. Any musketry firing in the afternoon to your front or right?—A. I think there was musketry firing, but we could not hear it so plain as in the evening.

Q. About what time did you hear this cheering which you speak of?—A. About sunset.

Captain *Mark I. Bunnell*, then lieutenant Thirteenth New York Volunteers, who was also on the skirmish line of petitioner's column, testified as follows:

Q. What could you see and hear during that day?—A. I saw some skirmishers from the opposite side—two or three cavalrymen I saw come out in a corn-field in a front a little to the right; and heard firing.

1531 Q. In which direction?—A. Soon after we were in position there was some firing in front, and a little to the right of the front.

Q. Artillery or infantry?—A. Artillery and some carbine firing—cavalry. That was the skirmish line, I judge.

Q. Could you see any enemy in your front?—A. Only those few cavalrymen that came out there.

Q. Do you know whether the enemy came down in force in your front that day; if so, when?—A. The impression was that there was some force there in the latter part of the afternoon. I did not see them; I could not see them.

Q. Was there any contest of any description in any other direction than directly in your front and right?—A. Judging from the firing there was at the right.

Q. What was it; infantry, or artillery, or both?—A. Both.

Q. How near were you to that contest?—A. It would be almost impossible to tell.

Q. You could hear musketry distinctly?—A. Yes; very distinctly.

Q. Could you hear anything else indicating a contest or battle?—A. Late in the afternoon we could hear the huzzas and howling of the soldiers, apparently as though they were charging, and going backwards and forwards a number of times.

The rest of this witness' evidence has already been cited in another connection; but it will be perceived that the enemy's force in front of petitioner's head of column, of which the witness was well placed to judge, was cavalry skirmishers, and if there was any infantry force there at all it was not until the latter part of the afternoon; meanwhile he and his comrades *were aware that General Pope's army was fighting*, although petitioner, with his headquarters 2$\frac{3}{4}$ miles to the rear from Dawkins' Branch, insists that he, himself, was not.

Assistant Surgeon *William L. Faron*, Twenty-second Massachussetts Volunteers, Martindale's brigade, Morell's division, called for government, said (Board's Record, p. 890), as to the halt at Dawkins' Branch:

A. We halted on a small knoll; part of it overlooked quite a large valley; quite a large part of it was cleared, and on the right I saw the line of the Manassas Gap Railroad.

Q. This point that I have indicated on the map as Dawkins' Branch?—A. I should take the branch to be a little farther away. I should take the branch to be about a mile away from the place where we halted; there might have been a dry run at the foot of this knoll, but I think not.

Q. What did you do after you came to a halt there?—A. I went down on the railroad; I went around generally in the woods and looked at the situation generally; saw firing was going on along the right of us, over toward Thoroughfare Gap.

Q. Did you see any indications of an enemy immediately in your front?—A. I did not see any for a mile or more; I looked along through the field close; General Porter came up and borrowed a glass of me; he asked me what I had seen. I told him I thought there was a battery coming in about a mile from us on the Washington side of the road. Not very far from it, I think, there was a small house, and I saw something that led me to suppose that there were men going in there.

Q. Do you recollect what reply he made?—A. I do not know that he made any reply to me.

Q. Did that battery open upon you?—A. It opened shortly afterwards; of course cannot tell you how many minutes, because I did not keep any note of the time. I had no intention of making any memorandum. It opened and fired before the troops were withdrawn, I think, not exceeding three, might have been four, possibly but two shots.

Q. Where did those shots strike?—A. One of the shots struck a man in the front rank of the First Michigan Infantry, and passed through his abdomen, and struck the first man in the rear rank in the thigh.

Q. You were there at the time?—A. I was at the place and saw the men; they were sitting or lying just a little lower down on the slope of the hill in front of me.

1532 Q. Then what was done?—A. Shortly after that we withdrew.

Q. What indications, if any, did you see of an enemy in your front, or to your right and front, or to your right?—A. To the right and front.

Mr. CHOATE. I do not know that an assistant surgeon is a military expert.

The RECORDER. I asked him what he saw.

Mr. CHOATE. I have no objection to what he saw.

A. (Continued.) Beyond this general clearing to quite a large extent there was a smaller clearing, only a part of which could be seen; there was a small opening in the wood; across that opening there came a small body of men; they halted in the opening where there was evidently a depression, but their heads and shoulders could be plainly seen.

Q. About how many men?—A. I should judge not over 20.

Q. What else did you see of an enemy in your front, or to your right and front, or to your right?—A. Nothing.

Q. Could you see anything that would indicate the march of troops; if so, what?—A. I could see a large cloud of dust on the Warrenton turnpike moving towards Centreville.

Q. After that where did you go?—A. I went into camp with troops at night, *after they withdrew.*

Q. Did they remain in this advanced position during the day?—A. *They were withdrawn in the afternoon; the sun was declining in the heavens.*

Q. How far were they withdrawn?—A. *I should judge inside of a mile.*

Q. More than a half a mile or less?—A. That I could not tell you; I could go to the spot, to the place where they came, because we withdrew on the same road, and then came back and went into camp again after dusk.

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(Board's Record, p. 898.) (Redirect.)

Q. You say you heard firing off to the right. What firing was that?—A. There was firing over, I should judge, somewhere on the northwest side of the Warrenton pike; and on the pike that was lying between us and Thoroughfare Gap there was quite hard fighting; volleys of musketry and artillery firing. There was some musketry firing over beyond that point, and but little artillery firing; you could see the smoke of the rebel guns, and the shells exploding beyond, but not as hard there as over on the right.

[It will be observed as I go along that Captain Monteith, petitioner's then aide-de-camp, also saw those shells bursting in air.]

Q. How long did you hear that during the day?—A. More or less all the time there was sound of fighting, and we expected to be in it. I would like to make an explanation in regard to distance, which the gentleman refused to allow me to make. The body of men that came out *here* was fired at by Hazlitt's battery, and the shell was exploded right in the place where these men were; they ran away. I asked the sergeant for what time he cut his shell, and he said for a mile; that is how I locate the distance of those men in front of me.

Q. The sergeant of Hazlitt's battery fired the piece?—A. Yes.

Bvt. Lieut. Col. *Jos. P. Cleary*, then of the Thirteenth New York Volunteers, under Colonel Marshall, testified as follows (Board's Record, p. 673):

Q. Do you know of any action in this direction [north]; if so, what was its character?—A. To the right of where we lay along toward dark in the evening there was musketry firing. I could hear the cheering of our men and the peculiar yell of the enemy as if they were charging and recharging.

Private *Charles E. Brahm*, Fifth New York Volunteers, Warren's brigade, Sykes' division, a government witness, testified as follows (Board's Record, p. 936):

Q. Did you hear any firing at that time?—A. We heard firing mostly all day;
1533 artillery. I could see the artillery in the morning at nine o'clock down toward the direction of Groveton. We laid alongside of the road two or three hours, and heard musketry firing all that time—towards night very heavy.

Q. Did you see any enemy in your front?—A. I did not. There was some artillery firing in our front—two or four shots that I can recollect. This was the closest firing we had to our line.

Q. Did you hear any musketry firing during the afternoon?—A. Yes; a great deal toward the right and rear of us.

Q. Off in what direction?—A. Toward the right and rear.

Private *Joseph Robbins*, Eighteenth Massachusetts Volunteers, Martindale's brigade, Morell's division, kept a diary at the time, in which he said (Board's Record, p. 845): "On the 29th marched to Manassas; then orders came to move towards Manassas Gap. *Now we expect to have some fighting.*" He says he "heard considerable firing on their right" until dark, up to the time of bivouacking.

By this witness' diary it is very evident the volunteers under Morell in petitioner's corps knew what they were moving up towards Dawkins' Branch for.

They were not looking back to see how they could get behind "Bull Run that night," but forward to meet the enemy. They knew a battle was going on and that they should be in it.

Col. *E. G. Marshall*, United States Army, retired, a graduate of the United States Military Academy at West Point, called by the accused, and since recalled before this Board, and his prior statements accepted without question by petitioner (p. 190, G. C. M. Record, and p. 75, Board's Record), has testified as follows:

Q. State the position and force of the enemy in the immediate vicinity of General Porter's command as far as you know it.—A. Immediately after going there my skirmishers were fired on by a body of dragoons, and shortly afterward there was a section of artillery which opened fire upon General Porter's command. Soon after that, perhaps about two o'clock, the head of a large column came to my front. They deployed their skirmishers and met mine, and about three o'clock drove my skirmishers into the edge of the timber. We were all on the left of the Manassas Railroad, going toward Gainesville. Their force continued to *come down all day;* in fact, until one o'clock at night. It was a very large force, and they were drawn up in line of battle as they came down.

I reported at different intervals to General Morell, my immediate commander, the position of the enemy; but at one time I deemed it so important that I did not dare to trust orderlies or others with messages, and I went myself up to him to confer concerning the enemy. This was about dusk. General Morell told me that he had just received orders from General Porter to attack the enemy—to commence the attack with *four regiments*. He seemed to be very much troubled concerning the order, and

asked my advice, my opinion. I told him by all means not to attack; that it was certain destruction for us to do so; that I, for one, did not wish to go into the timber and attack the enemy. Their position was a strong one, and they were certainly in force at that time—twice as large as our force—all of General Porter's corps. He had expressed to me the tenor of General Porter's order. I also deemed that we had executed the same with reference to the other part of the army—General Pope's army—by keeping this large body in force, and better than we would by attacking them, because if we had attacked them, I felt that it was certain destruction, as we would have had to move our line of battle across this ravine into this timber, and then perhaps our line of retreat would have been entirely cut off from General Pope's army.

I may say that this army that came down in our front was a separate and distinct army of the enemy from that *which we saw General Pope's army fighting with.*

About the same time—before I went in to General Morell—I could hear and judge of the result of the fighting between the force of the enemy and General Pope's army.

I could see General Pope's left and the enemy's right during the greater part of the day, about two miles off, perhaps more, diagonally to our front and to the right. The enemy set up their cheering, and appeared to be charging and driving us, so that not a man of my command but what was certain that General Pope's army was being driven from the field.

In the different battles I have seen, I have learned that there is no mistaking the enemy's yell when they are successful. It is different from that of our own men, our men giving three successive cheers, and in concert, but theirs is a cheering without any reference to regularity of form—a continual yelling.

1534 Thus did this witness testify on the original trial. It will be perceived that the point that the petitioner has undertaken to raise here, of a separate and large force in his front during that day, was raised then before the court; nevertheless it is to be observed that the receipt by Morell of petitioner's order to attack with four regiments, at dusk or about dusk, is a fair indication of the number of the enemy the petitioner at *that* time thought were in front of him to permit of two regiments supported by two others making an attack.

Capt. *John S. Hatch*, First Michigan Volunteers, Martindale's brigade, Morell's division, a witness for the government, testifies as follows (Board's Record, p. 600) as to what transpired at the front, near Dawkins' Branch, on the 29th August:

Q. Tell what you saw when you got there at that point.—A. When we turned off into the woods we were preparing to go into action, as I supposed. I think the pieces were loaded. Caps were left off the guns, and cartridges examined, and cartridge-boxes, and some such things as that. We remained in the woods a little time, and then we moved off to an eminence where we could look off into the depression or ravine; and then the Thirteenth New York was thrown out as skirmishers.

Q. How long had this been after you had arrived at that point before the Thirteenth was thrown in?—A. It is my impression that we were loading pieces and preparing, as we supposed, to go into action. I recollect we were talking of it together; that it was about noon. I do not recollect looking at a watch. It was about twelve o'clock, I should say; not far from that any way.

Q. That the Thirteenth were thrown out?—A. Yes, sir.

Q. You remained there during the day?—A. Remained there all that day.

Q. After the Thirteenth were thrown out what did you see?—A. We came out of these woods, I guess, almost entirely, so that we could see the Thirteenth New York maneuver, and see the ravine and woods on beyond. I think our arms were stacked—our brigade. We lay there and saw the Thirteenth New York moving; they kept moving on until they met with some little check on the other side; there were some shots fired; then, some time after that, a solid shot came over. General Porter was there with his staff. I do not know whether there were any other generals there or not. There was a little scattering there and a little commotion all around, until pretty soon another one came over, and there was a piece run out of the woods where the Thirteenth New York had met with some opposition from the infantry; there was another shot fired soon after that, and we supposed the work was commencing. There were three shots, I think, or four shots fired. We supposed that they were firing at General Porter and his staff, because they were mounted and conspicuous.

Q. Then what was done?—A. There was nothing done by us during that afternoon. We were lying there at ease until early in the evening, when our brigade, a portion of it—my regiment at least—was thrown out, you might say, as skirmishers. We were thrown out to guard against a surprise that night—thrown out to the right of where the New York Thirteenth went down.

Q. How long did you remain there?—A. Two hours; about that.

Q. What indications, if any, did you observe of the presence of the enemy during the day?—A. We saw fighting going on on our right and front.

Q. What kind of a contest was it?—A. There was heavy artillery firing.

Q. How long did that continue?—A. From the time we came out on to that eminence, out of the woods; there was firing all the afternoon, but not continuous; there was at times heavy firing, rapid firing.

Q. From the character of the firing what were the indications?—A. It was heavy—artillery fire.

Q. I understand you to say that you could see the action going on?—A. I could not see the troops that I recollect. I do not think I could, but the smoke and the bursting of shells could be seen, and we could hear the sound of the artillery, and see the lines of smoke; towards evening we heard musketry firing.

1535 Q. How long was it after the Thirteenth New York went out before you saw that gun run out that you speak of?—A. They had time to get down three-quarters of a mile or more—perhaps half an hour.

Q. During the day what enemy did you see in your front besides what you have mentioned at that time?—A. Saw a line of dust on the left making towards Jackson, who we understood was opposing our forces.

Q. At the time?—A. At the time.

Q. Did you see any enemy directly in your front?—A. These woods were there; nothing more than artillery. There were infantry opposed to the Thirteenth New York.

Q. How long did they remain there, artillery and infantry?—A. I do not know that; they did not remain all the afternoon.

Q. Had no more artillery firing from them?—A. The artillery, three or four shots, was all that bothered us.

Cross-examination by Mr. BULLITT:

Q. What time was it, in the afternoon or toward evening, that you heard that musketry firing?—A. The day was well advanced.

Q. Five or six o'clock in the evening?—A. I should judge so; before sundown some time.

Q. What you had heard, prior to that time, was all artillery firing?—A. I do not recollect any musketry firing until toward sundown; perhaps the sun an hour or two high.

Q. What time was it that you were sent out on that picket-line?—A. The Thirteenth New York was sent out, and I was in the same brigade with them. As I say, we were preparing for action in the woods about twelve o'clock, I should think.

It is plain that a portion of the petitioner's corps was, on the 29th August, 1862, as charged in the first and second specifications of the second charge, "in sight of the field and in full hearing of its artillery."

Even the petitioner, in his opening statement (p. 28), had to admit that as early as when he was at Manassas Junction that day "the sound of artillery in the direction of Groveton" was heard by him.

From these witnesses, both petitioner's and the government's, is obtained concurrent testimony to material facts, which can neither be evaded nor disposed of by "want of recollection" on the part of others who were called, or statements from others still that they "did not hear" or see the contest or hear the cheers of the Union soldiers and yells of the Confederates. As for the petitioner himself, he had taken good care to locate his headquarters sufficiently for to the rear to interpose the heaviest woods between himself and the action and see and hear the least of the battle.

One of the most remarkable pieces of evidence in this remarkable case is found in that of Maj. Gen. Samuel G. Sturgis, United States Volunteers, now colonel Seventh United States Cavalry and brevet major-general United States Army, of a conversation he had with petitioner at the front, which tends to show that at that time (after McDowell had gone) the petitioner did not believe that the enemy was in force in his front. We have also seen by the evidence of Dr. Faxon, which has just been cited, that when the petitioner borrowed his glass, in order to look to the front, he seemingly was not aware of artillery there. The

following comprise the extracts from General Sturgis' evidence (Board's Record, p. 711):

Q. State your rank in the Army.—A. Colonel Seventh Cavalry, and brevet major-general.

Q. What rank and command did you hold on the 29th of August, 1862?—A. I was brigadier-general of volunteers. I had on that day only one brigade of a division, the principal part of which was back of Alexandria. On that day I had only one brigade with me, General Piatt's brigade.

1536 Q. Where did you move from on the morning of the 29th of August, and up to what place?—A. I am not exactly certain where I moved from on that morning, because the march of the 28th of August is not clear in my mind; but I think it is in the neighborhood of Bristoe Station.

Q. To whom were you ordered to report?—A. General Porter; ordered by General Porter himself to join him; that order I received at *Warrenton Junction*.

The Board will recollect from what I have cited of the petitioner's opening statement, and of his own dispatches, that the petitioner knew that Sturgis was at Warrenton Junction at the time that Sturgis here says he was; he speaks of him as there (p. 89, petitioner's opening statement):

Q. Where did you find General Porter's column?—A. I found it on the road leading from Manassas Junction in the direction of Gainesville; I should think a mile and a half, about, beyond Bethlehem Church.

Q. Did you bring up this brigade with you?—A. O, yes.

Q. You say you went a mile and a half beyond Bethlehem Church toward Gainesville?—A. That is my recollection.

Q. What did you then do?—A. I reported to General Porter. I rode in advance of my brigade. I found troops occupying the road, and I got up as near as I could get and then halted my command, and then rode forward to tell General Porter that they were there. He said, "For the present, let them lie there."

Q. What did you do then, individually?—A. Well, I simply looked about to see what I could see. I was a stranger to the lay of the land, and the troops, and all that; so without getting off my horse, I rode about from place to place watching the skirmishers, and among other things I took a glass and looked in the direction of the woods, about a mile beyond which seemed to be the object of attention—beyond the skirmishers; there I saw a glint of light on a gun; and I remarked to General Porter that I thought they were probably putting a battery in position at that place, for I thought I had seen a gun.

Q. State what the conversation was.—A. I reported this fact of what I had seen to the general; *he thought I was mistaken about it*, but I was not mistaken, because it opened in a moment—at least a few shots were fired from that place—four, as I recollect.

The Board will please recollect this remark and the evidence of General Sturgis when we consider it in connection with the petitioner's statement as to what he (petitioner) saw when he was riding back from his interview with General McDowell:

Q. What force of the enemy did you see in that direction at that time?—A. *I didn't see any of the enemy at all.*

Q. Then what did you do?—A. Then when they had fired, as near as I can recollect, about four shots from this piece, General Porter beckoned to me; I rode up to him, and he directed me to take my command to Manassas Junction, and take up a defensive position, inasmuch as the fire seemed to be receding on our right.

Q. What firing do you mean?—A. I mean the cannonading that had been going on for some time on our right, probably in the direction of Groveton.

It will be recollected here that when Maj. S. N. Benjamin (then Second United States Artillery) got to Groveton and put his battery in position, that at first there was a lull, he says, of half an hour (Board's Record, p. 614).

Q. How long had you heard that cannonading?—A. I don't recollect exactly where I heard it first. My impression has been that I heard it all along the march from Manassas to General Porter's position. I do not recollect distinctly that I did hear it, but I know I heard it all the time after I arrived there until I left.

Q. What time of day was this that you received the order to move back with your

command to Manassas Junction?—A. I have no way of fixing the time of day. I have carried in my mind the impression that it was more about the middle of the day—about one o'clock.

1537 In that connection the Board will notice in Major Benjamin's evidence that the latter puts it exactly between half past twelve and one o'clock for that lull. This was not long after petitioner had returned from the railroad to the head of his column at Dawkins' Branch, and while General McDowell must have been taking Brigadier-General Patrick's brigade up the Sudley road.

Q. What did you do when you received that order?—A. I sent word to General Piatt to move back to Manassas Junction, and that I would join him there.

Q. Do you know whether your order was obeyed?—A. Yes; it was obeyed.

Cross-examination by Mr. BULLITT:

Q. What next did you do after that?—A. I rode back myself as far *as Bethlehem Church.*

So it is apparent that this witness did not go the entire distance with the brigade.

Q. Did you receive any order from General Porter subsequent to that?—A. Yes, sir.

Q. What was it?—A. To bring forward my brigade again.

Q. What did you do?—A. Brought it forward as far as Bethlehem Church.

Q. What then?—A. I was ordered to encamp there.

Q. You did encamp there?—A. Yes.

Q. How long was it after you got the order to fall back to Manassas before you got the order to fall back to Bethlehem Church?—A. I cannot say exactly, but as soon as I got the order to come forward again I brought the brigade forward and night overtook us at Bethlehem Church—dusk; then we were *ordered to encamp there.*

Thus it will be perceived that a considerable time must have elapsed between the time of the order to go to Manassas Junction and the time when that order was received to go forward again—several hours.

Q. So that the order to fall back to Manassas might have been given late in the afternoon, might it not?—A. No, sir; I don't think it could have been beyond two o'clock. I have no way of fixing the hour except by my impression of the day, as it looked; and I recollect the heat of the day.

Q. In going back after receiving this order to fall back to Manassas, did you meet troops coming up to the front?—A. Yes; we met some troops. We met some of a division.

Q. Whose was it?—A. I think it was Ricketts' division. That is my recollection of my inquiries at the time.

Q. At what point was it?—A. Near Bethlehem Church; *we turned off to their right.*

So that he must have got back here, between Bethlehem Church and the Sudley road, at the time he met Ricketts.

Q. Did you halt your command at that point?—A. I was not with my own command. It had preceded me. They had gone back. I rode back following them.

Q. Were you not left at Warrenton Junction on the 29th to guard a train until the arrival of General Banks? Do you recollect that?—A. On the 29th? No, sir.

Q. On the 27th?—A. Yes; on the 27th.

Q. You remained there until you were relieved from that duty?—A. My orders from General Porter were to march and join him as soon as General Banks would come up, who was bringing up the rear; but inasmuch as General Banks got possession of the road in advance of me, I brought up the rear myself.

1538 Q. Do you recollect about what time of day it was when you reported to General Porter that you were on the ground with your troops?—A. Yes; I think it was about the middle of the day. I cannot fix it definitely.

Q. Had General Porter's troops then deployed?—A. No, sir; they were not deployed; many of them were occupying the road. I don't know what troops were immediately there with them, except a battery.

Q. Did you see his troops deployed in front?—A. No, sir; nothing but skirmishers. I saw the skirmish line.

Q. You did not see Morell's division deployed?—A. No, sir.

Q. Were you up at the front?—A. Yes; it might have been, but I don't recollect now seeing it. I don't recollect that there were any troops deployed.

Redirect examination:

Q. You have stated that you saw Ricketts' division come up toward Bethlehem Church while you were stationed at Manassas Junction?—A. No; as I was reaching *Bethlehem Church* on my way back I met it.

Q. As you were going back to Manassas Junction you met Ricketts' division coming up?—A. Yes, sir.

Q. Do you recollect any incidents connected with the arrival of General Ricketts' division which impressed that fact on your memory?—A. *Yes; I recollect a fact that it struck me as strange that we should be going back while they were apparently going in the direction of the firing off to their right,*

Q. Off toward the Sudley road?—A. On the right as they came up from Manassas Junction, off in the direction of the firing.

Q. By looking at the map would you be able to indicate whether it was the Manassas and Sudley road that you refer to?—A. That is on so large a scale that I doubt if I could. Ricketts was taking the right-hand road, the Manassas and Sudley road; my impression is it was right at the church; the junction of the roads was as far as I went back. My brigade had moved back to Manassas Junction.

* * * * * * *

Q. Where did you see a battery on the road that you have mentioned when you went up to the front? I understood you to say you saw some battery on the road.—A. There was a battery at the point where I reported to General Porter—in that vicinity.

Q. What were the troops of General Porter's corps doing when you saw them?—A. I don't recollect that they were doing anything. They were perfectly quiet, apparently waiting.

Q. Were their arms stacked?—A. Everybody seemed to be lying around, just the way you do before a battle, in anticipation of news of some movement.

* * * * * * *

Q. Was that General Piatt's regular brigade which you brought up?—A. It was known as Piatt's brigade; I was not familiar with it. The fact was that there was a division forming for me, and this brigade had been sent down to Warrenton Junction; I was not so familiar with that brigade; I don't know that I had seen it at that time.

* * * * * * *

Q. How did you learn that those were Ricketts' troops that you saw?—A. I simply inquired at the time what troops they were, and was informed—I do not recollect by whom; simply general notoriety at the time.

Q. Were they then on their march toward the Warrenton pike along that Sudley Springs road?—A. All I know about them was that they turned off to their right on a road close to the church.

Q. Did you see General McDowell at that point?—A. I did; but not at that time.

* * * * * * *

Q. Did you see General McDowell in that neighborhood that day?—A. I met him at Bethel Church on my way up to the front.

Q. When you were going up to General Porter?—A. Yes.

Q. You went up to the front. You remained there how long?—A. Probably we remained there an hour and a half or two hours.

Q. Then you came back, and was it when you returned that you saw these troops of General Ricketts' moving in the direction toward Warrenton?—A. Yes.

1539 By the PRESIDENT OF THE BOARD:

Q. Was it on your return that you met General McDowell?—A. When I was going up.

Q. When you were coming up you met General McDowell at Bethlehem Church?—A. Yes, sir.

Q. In what direction was he coming?—A. He told me where General Porter was; whether he told me he had been up there I don't know. He had just arrived from some point, and told me where General Porter was.

Q. Where did he go then?—A. I left him there.

Q. Did you see anything of King's division?—A. I did not.

Q. It was when you came back, then, that you saw Ricketts' division?—A. We met a division which, on inquiry, we were told was Ricketts'.

It is apparent from this evidence, in connection with what had happened just before off to the right of Dawkins' Branch and the "Manassas and Gainesville" road, towards the Manassas Gap Railroad, that the portion of Morell's division under Griffin which had moved over to the right had been brought back and had been put back on the road, and that the moment petitioner saw any indications of an enemy, irrespective of the number, he actually began to retreat.

Brig. Gen. *A. S. Piatt*, United States Volunteers, of Sturgis' division, also testified as follows (Board's Record, p. 1045):

Q. From Manassas Junction where did you go?—A. I was ordered up the Thoroughfare Gap road, and I marched up, as near as I could judge, between three and four miles. I cannot tell exactly the distance. There I was halted by General Sturgis on the left of the railroad.

Q. Left of what railroad?—A. The Manassas Gap Railroad.

Q. That road that you went up, what place did it go to or pass through?—A. As near as I know, it went through Manassas Gap.

Q. Were there troops in front of you?—A. There were troops in front of me. When I came to a halt, there was a brigade or more than a brigade in front of me; they passed a little in front, in fact out of sight where I was halted.

Q. Whose troops were they?—A. I could not say.

Q. Did you hear any firing?—A. Yes; I heard firing from 10 o'clock in the day. There was continued firing from the time I left Manassas Junction, according to my remembrance of it, up to the time I halted, and afterwards.

Q. Where was this firing?—A. It was to my right and front, as it were. There was less firing out where I was halted. While I was standing there I had time for observation. It was to my right and front, and also to my right and back; I seemed to be perpendicular to two parallel lines of firing.

Q. That which was more nearly in your front, what was it?—A. I supposed it to be a Confederate force. While I was standing there were three shots fired, and, as I judged at the time, they were to my right and front, on the right of the road, as I faced up the road. There were three shots fired there that I could see the smoke rise from the guns from where I stood.

Q. Apparently a Confederate battery?—A. Yes; where I stood there was quite a number of trees; then there were patches of road; there was an opening, and then there was a screen of trees or timber, not very tall, that screened the position of this artillery which was fired from there. At the time of seeing this position, it struck me as a very favorable one. I did not know at that time that it was the Confederate artillery.

Q. What did you next do?—A. The next I did, I was ordered to march to Manassas Junction from that point by General Sturgis.

* * * * * * *

Q. What was the character of the country between you and the battery?—A. It was up hill, slightly an elevation.

Q. Go on as near as you can recollect and describe the country.—A. The
1540 country was undulating, rolling slightly, not very much, from Manassas Junction up to the point I had reached. There was a little depression in the ground that I had passed; and it continued, as I recollect, to rise gradually up to this point where I saw these three columns of smoke that rose from the artillery that was fired.

Q. Did you see any other Confederate force there?—A. I saw no Confederate force. I only saw this battery.

Q. Did you form any estimate at the time as to what force would be sufficient to take that battery?

(Objected to.)

A. I could not form that estimate, for I did not see the force before me. The only idea that struck me was the feasibility of attacking it.

Q. In the position in which that battery was placed, what opportunities presented themselves to you from your observation, made at the time, for attack?—A. As the ground was interspersed over the road with timber, a little opening, and beyond was a screen of woods, and that could have been approached very easily, and any force by open order passed through, it struck me that the battery might have been assaulted without great difficulty.

Q. After you marched back to Manassas Junction, what were the next orders you received?—A. I received orders to march back to Manassas Junction. I marched back towards Manassas Junction, but before I reached Manassas Junction I was overtaken by an order to countermarch and march back again, which I did, back to the original position.

Q. What time was that when you got back to your original position?—A. It was along towards the close of the evening.

Q. What did you do then?—A. I then was ordered into camp for the night.

Q. How long during the day did you hear this firing that you say you heard off to the right?—A. I think it was about from ten o'clock in the day, as near as I can recollect, that there was a continued firing, more or less.

Q. Up to what time?—A. I think the firing, if I recollect correctly, was until I got back, or nearly back, to the original position. They had ceased before I got quite back.

Q. What was the firing that you heard?—A. My remembrance is that it was artillery firing that I heard.

* * * * * * *

Q. How far did your march backward?—A. About two-thirds of the distance from my position there, as I judge, to Manassas Junction, before I was ordered back again.
Q. How long did you march take you?—A. When I got back it was in the evening.

* * * * * * *

Q. Do you know that that was a Confederate battery at all?—A. I judge it was from the direction of the fire, it being perpendicular to where I stood.
Q. Your line formed a right angle with the two lines?
[Witness indicates the relative situation.]
Q. Was that the only way you inferred that it was a Confederate battery?—A. Yes, sir.
Q. Were there any batteries near you that responded?—A. No, sir.
Q. There was no response?—A. None that I heard; those were the only three shots while I was there.

* * * * * * *

Q. Were you in the vicinity of any large body of troops when you encamped?—A. Griffin's brigade was right over the railroad from me when I encamped that evening.
Q. Where was Sykes' regulars?—A. I will state this: it was either Griffin's brigade or Sykes' regulars.
Q. Over the railroad—to your left or right?—A. That would be to the right of the railroad. In taking the right I am always facing toward the gap.

General McDowell, as we have seen, stated on the original trial that when he and the petitioner went half a mile to the right to the Manassas Gap Railroad the "sound of battle seemed to be at its height."

In the cross-examination on the direct evidence he had given in 1862—not the cross-examination *then* concluded, but that instituted against objection before this Board—General McDowell said (Board's Record, p. 801):

1541

Q. Then if, after you took King away, there was not only a large army of the rebels, twice as large as you thought, between Gainesville and Groveton, but actual information of its being there was brought in the way I have stated to General Porter, would you not consider that he was then bound to act on his own discretion, without regard to the suggestion or direction you had given on leaving him?

* * * * * * *

The WITNESS. My opinion at the time was formed upon the belief that in front of General Porter was a force reported by General Buford. If there had been a different force I do not doubt I should have acted differently, but how differently I do not now know.
The question was then repeated.
A. I should say to this extent: I do not think it would have justified him in doing nothing. I think he should have made some movement, some tentative operation, at least.
Q. I do not ask you what he should have done.—A. You made a certain supposed state of facts. You have supposed a condition of affairs and asked me what should have been done.
Mr. CHOATE. I have asked the witness whether General Porter was then to act on his own discretion, without regard to the suggestion or direction that General McDowell had given to him.
The WITNESS. No. If that is the way you put it I will say this: I concede that at the time I left General Porter, and for some short time previous to that, he was subject to my orders. If I had given him an order, my separating from him—but that is a question for this Board to determine—but if he were under my command at that time, and I at that time had power to give him a valid order, I think that my separating and going away from him would not have relieved him from the operations of that order, and he should have carried it out without it was either countermanded by some superior authority, or that the execution of it became impossible.
Q. Didn't you think that when you left him he was left to the unrestrained operations of General Pope's joint order?—A. No, sir; as modified by me. It is for the Board to decide that question.
Q. Suppose that General Porter ascertained after you left him that the rebel force in front of him was twice what you had supposed it to be and spoken of to him, and twice Porter's own force, do you think then that he should have made an attack?—A. I think he should have found out the force.
Q. You say he should have tested and found out the force?—A. I think so; that is a question for this Board.

Q. Now, having tested and found out a force quite as large as his own, do you think he should have attacked them?—A. He should have made some tentative operations. There are a number of ways of attacking. You attack headlong, or you skirmish, or you shell. But to do nothing whatever certainly would not be complying with the order—to make no effort with the troops.

Q. Now, I ask you, if after making efforts necessary for the purpose he had ascertained there was a force there double his own, after you left him and took King away, do you say that he should have attacked?—A. He should have made an attack, yes.

Q. He should have made an attack just as you ordered it?—A. My order was, I confess to you, a very vague one. It was made to a person whose zeal and activity and energy I had every knowledge of—I did not pretend to give him any particular instructions or directions that he should skirmish, or shell, or charge, or anything of the sort; I merely indicated the direction in which his troops should be applied. Further than that I did not think and would not think now if I had the thing to go over again to direct.

Q. You did not construe it as an order given by you to an inferior general?—A. Certainly I did.

Q. What did you mean, then, by giving orders that were vague and amounted to nothing?—A. I did not say that.

Q. Well, gave orders of the kind you have described?—A. What orders?

Q. What did you mean by giving orders "vague," and merely an indication?—A. I meant just what I said: that General Porter commanded a corps. I did not tell him that he should deploy so many troops, or that he should put in so many skirmishers, or so many batteries, and do this, that, or the other. Those are questions of detail which as an army corps commander he was to carry out. All I did was to give line to his operations.

1542 Q. You meant that with the indication you gave him he should act on his own discretion?—A. Yes; but he should act.

* * * * * * *

Q. Would it not make a difference, in your opinion, as to the probable result of an attack by General Porter, whether the rebel force in front of him was confined to the troops mentioned in Buford's dispatch, or was an army twice as great?—A. Yes, sir.

The RECORDER. I submit before that is answered that this is a line of questioning that is foreign to my direct examination.

The PRESIDENT OF THE BOARD. I understand that this cross-examination is upon his original testimony.

The RECORDER. I submit to the Board that he has no right to that.

The PRESIDENT OF THE BOARD. It is already decided.

Q. On page 95 you said:

"Q. Had the accused made a vigorous attack with his force on the right flank of the enemy at any time before the battle closed, would or would not, in your opinion, the decisive result in favor of the Union army, of which you have spoken, have followed?—A. I think it would."

That was in reference to what you had said about five or six o'clock, namely:

"Q. What would probably have been the effect upon the fortunes of that battle if between five and six o'clock in the afternoon General Porter, with his whole force, had thrown himself upon the right wing of the enemy, as directed in this order of 4.30 p. m. of the 29th of August, which has been read to you?

* * * * * * *

"A. I think it would have been decisive in our favor."

Q. Would it not have made a difference, in your opinion, on these questions, if General Porter's attack was to be made, not upon the force mentioned in Buford's dispatch, but upon the whole of Longstreet's army of twice that number?—A. You will understand that that attack there, at least as it was propounded to me for an opinion, was to be an attack in conjunction with the attack made along the Warrenton pike, or with the forces that were confronting what was known as Jackson's force. If you read a little farther on that same question, and give the whole of what I said there, and give all the bases I then gave of the opinion that was asked of me—it was that, even if there were a superior force opposed to General Porter, he should have attacked that superior force; that he would have withdrawn the enemy from and relieved the front of another part of the line.

Q. Would it make no difference, in your opinion, whether he had 12,000 or 25,000 troops in front of him?—A. Of course.

Q. It would just make the difference between decisive in our favor and not being decisive?—A. I will not say that.

Q. What difference would it have made?—A. I cannot tell you.

Q. No man can tell, can he?—A. No, sir. Let me say this: If the main contest was equally balanced, and under those circumstances an attack by 10,000 men had been vigorously made, it certainly would have turned the scale in our favor.

* * * * * *

Q. * * * Did you intend that he should get into a general engagement with the enemy while you were removed from the scene back on the Sudley road so as to be out of all possibility of rendering him immediate assistance?

* * * * * * *

A. When I left General Porter I left him a corps commander, for him to operate in the direction indicated. How quickly he was to get in an engagement, whether an hour or an hour and a half, and how he would do it, whether in one way or another, I did not indicate, nor did I take it into my mind; it was simply that he was to operate on the left, and necessarily when he got over there the nature of his operations would be determined by the condition of things that he would find. What those conditions would be, I could not at that time tell. As to saying that I did not want him to do any fighting until I got around to a certain place, I made no such calculations.

Q. I ask you what you expected or intended?—A. I say what I expected or intended.

Q. You did not expect that he should become engaged with the enemy until you should get around on the left of Reynolds?—A. Yes; I did.

1543 It will be observed, in reference to these questions so skillfully put by the very able counsel who cross-examined General McDowell here on his "original" testimony, that he has been asking him as to what he expected or supposed the petitioner was to do. But that I submit was not and is not the light in which it is to be taken. We are to take the words and acts of General McDowell, what he said to the petitioner, and what the petitioner did under those orders that were given him, as indicating what was expected, or supposed, or understood. What he might have had in his mind might have been very different from the language that he used. I merely invite attention to this line of questioning on the part of the petitioner; it, in my judgment, has no bearing upon the case. However, upon examining the language that General McDowell swore on the trial he did use, and the acts of the petitioner immediately afterwards in simulating to do precisely what General McDowell had told him to do, we find that the orders of General McDowell at that time correspond exactly with what he says, namely, that the petitioner was *to attack*.

We have now concluded as to what petitioner did on the 29th August in the way of developing the enemy's strength except as to his dispatches. If the petitioner knew then all he claims to know now as to this force, it is certain that he did not communicate his knowledge to General McDowell; and his dispatches to and from his officers, to which he refers as being some of the sources of his information, do not warrant the claim he has made that he *then* knew of this assumedly large force being on General Jackson's right, or whose it was.

From his skirmish or picket line was certainly the quarter from whence such information in this case had to be obtained, yet those who were out there gave no evidence of it.

See Morell's dispatch No. 30, where he says:

GENERAL: Colonel Marshall reports that two batteries have come down in the woods on our right, towards the railroad, and two regiments of infantry on the road. If this is so it will be hot here in the *morning*.

See Colonel Marshall's report to General Morell (No. 34), where he says, late in the day:

GENERAL MORELL: The enemy must be in much larger force than I can see. From the commands of the officers I should judge a *brigade*. They are endeavoring to come in on our left, and have been advancing. Have also heard the noise on the left as the movement of artillery. Their advance is quite close.

In these there is nothing to indicate the knowledge it is claimed was then possessed of this large force of Longstreet; two batteries and two regiments in one instance, and at least a brigade in another.

And petitioner did not give evidence of such knowledge when, late in

the afternoon, he gave his order to push up "two regiments supporting two others to attack" (see dispatch No. 37), at, as he says, about 6 p. m.

Petitioner claims that by his course he held in check a force of the enemy at least double his own, and thus saved Pope from total defeat. But in the reports of their operations on the 29th, Generals Stuart and Longstreet both concur in stating that, after they had taken preliminary measures to resist petitioner's advance, he, after firing a few shots, retired—one said to Manassas—and thereafter they were not materially influenced by him.

They were however in error as to petitioner's having gone to Manassas; he had only been successful in "putting everything out of their sight"; and, it will be seen, so far as his force was concerned, out of their minds as well. Part of his troops did go back to near there.

I have already said that in my judgment Longstreet's testi-
1544 mony as to having about 25,000 men more or less on the ground or near it, most of the 29th, was not an important element in this case.

The question is solely what petitioner knew was in front of him. *His own exhibits are conclusive against him.*

In dispatch No. 30, Major-General Morell stated two batteries and two regiments to have come down on their right, and then hazards the remark, based on this report, "If this be so, it will be hot here in the morning," showing conclusively that at *that* time Longstreet was not thought to be in force in his front.

It was sufficient, however, for the accused, and immediately the gallant Fifth Corps was put out of sight, and part ordered to fall back to Manassas Junction, several miles distant.

In this connection it seems pertinent to ask why No. 33 was sent, viz:

GENERAL MORELL: Hold on if you can to your present place. What is passing?

This does not betray much confidence in his *defensive* position, nor that he himself was in a place where he could know what was going on nor his corps ready to resist assault.

If there was danger of being crushed, why instead of writing did he not go at once to the front?

It seems certain that he made no sustained, or vigorous, or even fitful effort to ascertain during that day the strength of the force opposed, as he claims, to him, or to establish communication between his corps and the left of General Pope's army.

To say that because he then or now believes the force on his front to have been very much greater than his own, and to offer such statement as an excuse for failing to go to the aid of General Pope's army or failing to attack is in derogation of the traditions and history of the American army, some of whose most glorious victories have been won against superiority of numbers, or apparently insurmountable obstacles. Major-General Jackson at New Orleans, Taylor at Buena Vista, Scott at Lundy's Lane and in his battles from Vera Cruz to the city of Mexico, and Grant in the Wilderness campaign are pertinent illustrations of the point raised.

Mr. Pendergrast, in his "Law relating to Officers in the Army" (revised edition, 1854, p. 53), says:

> The duty of military obedience to the commands of superior officers is most fully recognized by courts of law; and it has been held that disobedience never admits of *justification;* that nothing but the physical impossibility of obeying an order can excuse the non-performance of it; and that when such impossibility is proved, the charge of disobedience falls to the ground. The learning on this subject is to be found in the great case of Sutton *cs.* Johnstone (1st Term Reports, p. 548), which was an action by

Captain Sutton, of His Majesty's ship Isis, against Commodore Johnstone, for arresting and imprisoning him on charges of misconduct and disobedience to orders in the action with the French squadron under M. Suffrein, in Porto Praya Bay, in the year 1782; and there the two chief justices, Lord Mansfield and Lord Loughborough, laid down the law in the following terms:

A subordinate officer must not judge of the danger, propriety, expediency, or consequence of the order he receives; he must obey; nothing can excuse him but a physical impossibility.

A forlorn hope is devoted; many gallant officers have been devoted.

Fleets have been saved and victories obtained by ordering particular ships upon desperate services, with almost a certainty of death or capture.

Mr. Pendergrast in his citation makes the reservation always understood that the order given is not manifestly and clearly illegal.

The General in Chief of the American Army (Sherman), in referring to this principle of obedience to orders in action (24th February, 1870), re-enunciated the rule laid down by the two eminent lord chief justices, for he said "that the stronger the force of the enemy present at the time the officer received the orders, the greater the necessity for him
1545. and his troops to pitch in, even if roughly handled, to relieve, *pro tanto*, the other forces engaged."

WAS THERE A BATTLE ON THE 29TH?

One of the most astonishing things in the petitioner's case is the effort he has made to prove no battle on the 29th August, and to do this he has brought several officers to testify they did not hear any.

It is necessary for petitioner to establish this, because, as the Count de Paris said, in a letter dated 8th October, 1876:

Under his first instructions, his duty would have been to attack the large and well-posted forces of the enemy which he unexpectedly met near the railroad only in two cases:

1. If he had received from a superior the positive orders to do so.
2. If he had been aware that a great battle was raging near enough for him to take a direct or indirect part in it.

In this case it will be perceived the Count assumes a large force in presence of petitioner.

Was there a battle *raging* that day? Let the official reports, Union and Confederate, which form part of the evidence now on file in the War Department, attest the fact.

The theory of the petitioner on this head is the theory of civilians without military experience—one like his 27th August theory, that the night was too dark, &c., for him to even undertake to begin earnestly to obey a peremptory order.

This petitioner was as much convicted by the evidence he himself brought on his original trial as by that of government.

Take, for example, the 4.30 p. m. order to move at once into action.

Where was he when he got it?

He was 2⅝ miles from his front, at the forks of the Sudley Church and Manassas and Gainesville roads.

Brigadier-General *Sykes* was with him, and, on the original trial, testified to the receipt of a written order from General Pope, and then answered on cross-examination as follows (G. C. M. Record, p. 178):

Q. Did General Porter make known to you the character of that order?—A. He did not.

Q. Did he read it in your presence?—A. Not that I know of.

* * * * * * *

Q. How long did you remain with General Porter on that occasion after the receipt of that order?—A. I continued with him from that time all night.

One thing may be considered as quite certain, and that is, if the petitioner had at any time, from the moment of receipt of that imperative

order, any intention *loyally* to obey it, he would have acquainted his division commander and personal friend.

It is almost an insult to the memory of the Union dead who fell on that field that day, while obeying orders, to discuss the question as to whether there was a battle.

No effort has been made here by me to ascertain the actual losses. General Pope, in his official report (introduced by petitioner), estimated them, from the reports he received, at six or eight thousand killed and wounded.

Maj. Gen. *Hooker* says that his division alone, of Heintzelman's corps, lost between 1,000 and 1,200 men (Board's Record, p. 947), and Maj. Gen. *Franz Sigel* swears that his own corps lost about 1,400 or 1,500 men. If to these losses are added those equally severe in Kearney's division of Heintzelman's corps, and Maj. Gen. Reno's division of Burn-
1546 side's corps, together with the heavy losses experienced by King's division, under Hatch, of McDowell's corps—without considering the losses in Reynolds' division of McDowell's command, one of whose brigades, under Brig. Gen. G. G. Meade, very late in the day (Board's Record, p. 500) got seriously into action while supporting King's attack, it will be seen that General Pope's rough estimate was very near, if not below, the actual loss.

The battle, like most of the battles of the war of the rebellion, consisted in a series of detached assaults, instead of a united movement, until late in the day.

Whether, in a military sense, this was the best under the circumstances, or whether different strategical or tactical movements would have resulted in greater advantage to the national arms, is a question wholly foreign to this case, which is as to what petitioner did or failed to do under his orders.

In the afternoon—after the 4.30 order had been sent him—the commanding general endeavored to make a combined attack. Why it was not completely successful will be found explained in petitioner's inaction.

Capt. *A. M. Randol*, First United States Artillery, Fifth Corps, a witness for petitioner, says (Board's Record, p. 94) he heard artillery firing occasionally during the day, sometimes quite heavy, evidently batteries engaging one another.

Heard no infantry firing until evening, and then "a very severe infantry fire, which attracted the attention of everybody as being very severe, and evidently considerable fighting going on over towards Groveton."

At that time, according to his evidence, he was back where the petitioner was, near the forks of the Sudley Springs and the Manassas and Gainesville road.

Lieut. *S. M. Weld*, petitioner's then aide-de-camp, admits (p. 268) that when General McDowell and the petitioner moved over to the railroad he could see "shells bursting high in the air." Severe artillery fire at times.

Col. *George D. Ruggles*, assistant adjutant-general, U. S. A., then chief of staff to Major-General Pope, was called by petitioner on the original trial, and said (G. C. M. Record, p. 159):

> Q. by COURT. Was or not the musketry fire, on the 29th August, which you have spoken of in your testimony, indicative of a severe engagement between large bodies of men?—A. The musketry fire was; but I desire to say that I did not hear the musketry firing myself until I came on the ground. The musketry firing which I heard after I came on the ground indicated an engagement between large bodies of men.

Commissary Sergeant *John Bond*, First Maryland Cavalry Volunteers, Sigel's Corps (Board's Record, p. 882), government witness, saw three distinct charges in the afternoon about one or two o'clock.

Capt. *LeGrand Benedict*, assistant adjutant-general, Carr's brigade, Hooker's division, Heintzelman's corps (Board's Record, p. 934), government witness, read from the official report of Col. Joseph B. Carr, commanding, as follows:

HEADQUARTERS THIRD BRIGADE, HOOKER'S DIVISION,
CAMP NEAR FORT LYON, VIRGINIA, *September* 6, 1862.

* * * * * * *

At two (2) o'clock Friday morning, August 29, I received orders to march at three a. m. and support General Kearney who was in pursuit of the enemy. A march of ten miles brought us to the Bull Run battle-field. About eleven (11) a. m. was ordered in position to support a battery in front of the woods, where the enemy with
1547 General Sigel's troops was engaged. Remaining about one hour in that position, was ordered to send into the woods and relieve two regiments of General Sigel's corps. I sent in the 6th and 7th New Jersey Volunteers. Afterwards received orders to take the balance of the brigade in the woods, which I did at about two (2) p. m. Here I at once engaged the enemy, and fought him for a space of two hours, holding my position *until our ammunition was all expended.* About four (4) o'clock we were relieved by General Reno and Colonel Taylor, but did not reach the skirt of the woods before a retreat was made and the woods occupied by the enemy. When I arrived out of the woods I was ordered to march about half a mile to the rear and bivouac for the night.

The witnesses assisted in preparing the report, and knew of its accuracy.

Col. *M. B. Lakeman*, commanding Third Maine Volunteers, Second Brigade, First Division, Heintzelman's corps, said (p. 934) there was "very severe fighting on our front the whole time."

His regiment went into action three times; once at 11 a. m., again at 12 m., and again at three p. m. There was continuous fighting all the time, from 11 up to dark, in his own brigade. (Board's Record, p. 935.)

B. F. Butterfield, Sixty-third Pennsylvania Volunteers, Robinson's brigade, Kearney's division, Heintzelman's corps, said they arrived on the field about noon (Board's Record, p. 939). "Before we went into action there was an incessant firing on our left, and had been ever since we arrived on the field—heavy infantry firing." This corresponds with what Captain Monteith, General McDowell, Dr. Faxon, and Captain Hatch have said, who could see the bursting of the shells.

Maj. Gen. *Franz Sigel* (Board's Record, p. 940) says the greater part of his corps was in action the whole day until evening.

Byt. Brig. Gen. *Thomas F. McCoy*, colonel One hundred and seventh Pennsylvania Volunteers, Duryea's brigade, Rickett' division, McDowell's corps, says (Board's Record, p. 642) they left Gainesville at daylight, and heard heavy cannonading when they left Manassas Junction.

Q. In going up from Manassas Junction toward Sudley Church, on that road, what indications, if any, were there of an action on Friday the 29th?—A. Heavy cannonading. We heard, as I remarked before, heavy cannonading when we left Manassas Junction, which continued until we arrived within view of part of the movements and actions; we could then see the infantry on the left of Pope's line.

Q. What could you see going on?—A. When we came in view on a prominent piece of ground where the road passed, we saw the left of Pope's line advancing partly on a charge into a wood or to a wood; there was cheering from their troops and ours.

Q. You mean Ricketts' division?—A. Yes. There was a good deal of excitement about that time among the soldiers.

Q. What musketry firing was there, if any?—A. There was musketry firing at that time. That was about the closing of the day.

Q. About where was your regiment at that time, would you say, upon the road?—A. I don't know whether I could show it upon the map or not. It was a prominent piece of ground upon the Sudley road that gives a good view of the battle-ground—a pretty good view of it. When we came there we first saw the infantry.

That I assume to be the Henry house hill, where we find from other evidence that General McDowell's corps was encamped that night.

Q. As to this cannonading that you heard from early in the morning, what was the character of it, heavy or intermittent?—A. Sometimes it was heavy.

Q. Did you see any troops, other than of your own division, when you were at Manassas Junction?—A. Yes, sir.

Q. Whose troops were they?—A. I understood them to be General Porter's corps.

1548 Q. At that time?—A. Yes.

Q. When you first arrived at Manassas Junction, was the cannonading then in progress, or had it ceased?—A. I don't recollect now about that.

Maj. Gen. *Samuel P. Heintzelman*, U. S. A. (retired), then United States Volunteers, kept a diary, in which he noted the time of events. He says (Board's Record, p. 610):

Q. Will you read to the Board from the diary those events which you noted at the time, August 29, 1862?—A. "Centreville, Friday, August 29, 1862: Kearney did not get off until after daylight" that night; the night before the 29th General Kearney was advanced as far as Centreville. I think General Pope was quite near on the opposite side of the river from Centreville. In the night an order came for Kearney to advance at 1 a. m. and attack the enemy. Hooker at 3 a. m. was to support him. The report was General McDowell had intercepted the enemy, and the next morning I started at daylight as I was directed. When I got to where Kearney was, his division had not started, and he was killed not long afterward, before I made my report.

Q. Now, will you be good enough to read what you made notes of on the 29th of August, as to the events of that day?

The witness read as follows:

"Kearney did not get off till after daylight. We are all detained by him. There is a heavy cloud of dust on the road to Leesburg, upon which the rebels are retreating or rather advancing. It is now a quarter past 7 a. m.; arrived at the bridge at 9 a. m. Firing commenced some two hours ago and has just ceased. Report that we are driving the enemy. At 10 a. m., reached the field, a mile from the stone bridge. Firing going on, and I called upon General Sigel. General Kearney was at the right. Part of General Hooker's division I sent to support some of Sigel's troops. General Hooker got up about 11 a. m.; General Reno nearly an hour later. Soon after General Pope arrived—about quarter to two. I rode to the old Bull Run battle-field, where my troops were. The enemy we drove back in the direction of Sudley's Church, and they are now making another stand. We are hoping for McDowell and Porter. *I fear we will be out of ammunition.* We have sent for it. At 3½ p. m. our troops driven back. At forty-five minutes past three McDowell's troops reported arrived. Firing closed at fifteen minutes past four. At half past four General Reynolds' troops arrived. Five p. m. our troops engaged on the enemy's right. Twenty minutes past five p. m. musketry firing commenced on our center. General Kearney has held his position. Forty-five minutes past five General McDowell on the field at headquarters. Heavy firing on our center. Kearney reports he is driving the enemy back. GENERAL PORTER REPORTS THE REBELS DRIVING HIM BACK, AND HE RETIRING ON MANASSAS. Twenty minutes past six very heavy musketry and artillery. McDowell's troops just entering the battle-field. Kearney on the right with General Stevens's troops, and our artillery drove the enemy out of the woods they temporarily occupied. The firing continued until after night, but left us in possession of the battle-field."

Bvt. Maj. Gen. *William Birney*, U. S. Vols., testified as follows (Board's Record, p. 681):

Q. What was the character of the action from twelve o'clock noon until the sun set?—A. My recollection is that, with occasional lulls in the firing, there was some heavy firing. The artillery was sounding all the time, and there was repeated and very heavy musketry firing. It was not an action as heavy as the one of the day following, but if I had not witnessed the one of the day following I should have thought the one of the day before very heavy.

* * * * * * *

Q. What I want to get at is whether there was any continuous musketry firing beginning at the time you first approached that battle-field up to the night, indicating a general engagement along the whole line?—A. I should say that in the morning the firing was that of a series of assaults and skirmishes—at least more of that character; occasional pretty heavy musketry; and in the afternoon it had more the sound of a continuous battle, although even then there were intermissions, as in a battle.

Q. I understand you that you were on General Kearney's extreme right?—A. Yes, sir.

* * * * * * *

Q. At other times than these you speak of, towards the middle and towards the close of the afternoon, about how large a force of infantry was at any one time
1549 engaged, as indicated by the sound and smoke which you heard and saw?—A. Do you mean on both sides?

Q. On our side.—A. I should not think there were over 8,000 or 10,000 at a time.

Q. You speak of a period somewhat near the middle of the afternoon when there was a somewhat general engagement, as I understand you?—A. My impression is that towards the close of the afternoon the fighting became more persistent—along about four o'clock.

Q. This persistent and more extended attack, as indicated to you by the sound and the smoke, was then towards the close of the afternoon?—A. Yes, sir.

Q. About what hour would you say?—A. I should think from four on there was a good deal more firing.

Q. How long did it continue?—A. The heaviest firing, of course, did not continue a great while at its heaviest point.

Q. I mean this *general* engagement in the latter part of the day?—A. My impression is that it was after four o'clock.

Bvt. Brig. Gen. *Charles Barnes*, then captain Ninth Pennsylvania Reserves, Reynolds' division, McDowell's command, testified as follows (Board's Record, p. 661): "There was a heavy contest going on on our right all day, or nearly all day." Heavy infantry firing at 3.

Bvt. Maj. Gen. *Abner Doubleday*, U. S. A., commanding brigade, King's division, McDowell's corps (Board's Record, p. 688), speaks of the heavy fighting between five and six p. m., of his division.

Capt. George Shorkley, Fifteenth United States Infantry, then adjutant Fifty-first Pennsylvania Volunteers, Ferreros' brigade, Reno's division (Board's Record, p. 689), answered as follows:

Q. (By RECORDER.) In the afternoon, say from twelve o'clock up to sunset, what was the character of the action?—A. Decidedly heavy fighting in the evening. * * * In the middle of the afternoon we were fighting, and we were then moving up to a new position.

Bvt. Brig. Gen. *Rufus R. Dawes*, Sixth Wisconsin Volunteers, Gibbon's brigade, King's division, McDowell's corps, testified as follows (Board's Record, p. 834):

Q. Where were you on the morning of August 29, 1862?—A. We retreated from King's engagement and arrived near Manassas Junction about daybreak on the morning of the 29th.

Q. Did you see any other troops there during that morning aside from your own division; if so, what?—A. During the morning I saw the corps of General Porter.

Q. Which direction were they taking?—A. They were moving along parallel with the Manassas Gap Railroad in the direction of the battle.

Q. Which direction do you mean by that?—A. That is about the position we occupied [between the forks of the Manassas and Gainesville road and Manassas Junction] when we were in bivouac alongside the Manassas Gap Railroad. The corps of General Porter passed by, going up in that direction. [Up the Manassas and Gainesville road.]

Q. At what time did they pass you?—A. About nine o'clock.

Q. While you were there what indications were there, if any, of a battle that day?—A. *At that time there was artillery, and during the day at different times there was musketry. It is my recollection that there was musketry firing about the time that General Fitz-John Porter's troops passed up, for the reason that our men talked with those troops in regard to the battle that they expected to take part in—that appeared to be in progress at that time.*

Q. How long did you hear during that day artillery and musketry firing?—A. My recollection is, at intervals all day.

Brig. and Bvt. Maj. Gen. *Jos. B. Carr*, United States Volunteers, commanding Third Brigade, Hooker's division, Heintzelman's corps, says (Board's Record, p. 836) his brigade marched from Blackburn's Ford and was at the Matthews house about 11 a. m., supporting some batteries
There was, up to 12, firing in front and scattering infantry fire;
1550 that Generals Sigel and Schurz reported to him that their ammunition was all expended, and he sent in his brigade to their re

lief and became immediately engaged and expended all their ammunition and had to send for more.

About 2 p. m. a general attack took place.

Q. Then that contest, within your own knowledge, or battle, extended from what time to what time during that day?—A. I should judge from the appearance of the woods that I had entered about twelve o'clock with my command, that they had been engaged all the morning—from the appearance of the woods and the wounded and dead; there were a great many wounded and dead.

Q. Federal?—A. Yes, sir.

Q. Have you been in other actions?—A. Yes; several of them.

Q. How would you characterize that battle as to severity, and the proportion of loss of those engaged?—A. Along our front I should say that it was as hotly a contested battle as I had been in, with one or two exceptions. I would except Gettysburg and Chancellorsville. Our loss was not as heavy there as in those other battles, although it was very severe.

Q. On the 29th?—A. Yes, sir.

Bvt. Brig. Gen. *James M. Deems*, then major First Maryland Cavalry, on General Sigel's staff, has described (Board's Record, p. 839) a charge of the enemy on Gen. Schurz's division, about 11 or 12 o'clock.

Brig. and Bvt. Maj. Gen. *G. W. Mindil*, then assistant adjutant-general to Kearney's division, Heintzelman's corps, says (Board's Record, p. 845), that before his division reached the field, which was about 9 or 9½ a. m., the indications of a battle were wounded men coming to the rear, "and a considerable number of Confederate prisoners."

At noon, when he reached the extreme right of the army in view of the battle-field, there was some infantry fighting going on by the troops of General Carl Schurz's division, and considerable cannonading.

Q. (By RECORDER.) Do you understand that the battle continued pretty much all day?—A. There were no intermissions. * * *

First Lieut. *Wm. Conway*, Twenty-second United States Infantry, then Seventy-fourth New York Volunteers, Taylor's brigade, Hooker's division, says (Board's Record, p. 847) his brigade made a charge about 4 p. m.

The action was very severe; men were knocked down with stones.

When we come to look at the evidence of some Confederates of Jackson's command, we will find that they were considerably out of ammunition at that time.

Brig. Gen. *Gilman Marston*, United States Volunteers, then colonel Second New Hampshire Volunteers, Grover's brigade (Board's Record, p. 859). He was in Brig. Gen. Cuvier Grover's heroic bayonet charge and lost 123 out of 300 men. He says that from twelve o'clock up to between three and four there was a little musketry fire on each side of their position at Peach Grove (Dogan house,) and some artillery firing to the left.

(Board's Record, p. 860.) There was pretty heavy artillery firing a little to the left at dark.

That artillery firing was evidently the firing of Cooper's battery, Meade's brigade, Reynolds' division, in order to be at the left of the position of Brigadier-General Marston.

1551 Capt. *James Haddow*, Thirty-sixth Ohio Volunteers, said as follows (Board's Record, p. 875):

* * * On the morning of the 29th we were at Manassas Junction.

Q. (By RECORDER.) Did you hear any firing that morning? If so, where and in what direction?—A. We did not leave there very early; we were waiting for orders; the major under whom we were conveying these supplies would go off to get orders; we must have remained there until near nine o'clock. In going from the station out toward a large building which the troops who were there said was McDowell's headquarters or had been, there was considerable cannonading, partially to our rear and

off to the left. I recollect distinctly, as we went out toward that building [Weir house], there were quite a number of people at the building looking toward the direction of the battle; we ourselves could see the smoke; there was considerable cannonading some time between daylight and eight or nine o'clock.

Asst. Adjt. Gen. *Hazard Stevens*, United States Volunteers, Stevens' brigade, Reno's division, Burnside's corps (Board's Record, p. 524), refers to four assaults known by him to have been made by the national troops on the enemy's lines, viz, one by his brigade, one by Hooker's division, one by Kearney's division, and one by Nichols' brigade of Reno's division.

Bvt. Maj. Gen. *George H. Gordon*, United States Volunteers, Third Brigade, First Division, Banks' corps, introduced by petitioner (January 3, 1879), says, substantially, that the sounds of the battle of the 29th were heard in Major-General Banks' corps, and alludes to their anxiety as to the result.

Lieut. *Stephen M. Weld*, formerly petitioner's aide-de-camp, who was called on his behalf, testified to going with petitioner and General McDowell from Dawkins' Branch to the Manassas Gap Railroad (Board's Record, p. 268), and says that while there he could both hear and see the firing—

> Severe at times; then it would slacken off and be slight, and then start off again. * * * In a northerly direction we could see the shells bursting high in the air, which would indicate it somewhere about Groveton.

Despite *this* witness' testimony, the petitioner has severely criticised General McDowell for saying there was a battle raging.

We see, however, by Lieutenant Weld, who was there, the petitioner's own witness, that *there was* a battle raging to the right.

Brig. Gen. *I. H. Duvall*, United States Volunteers, then major First West Virginia Volunteers, says (Board's Record, p. 861) he went into action with Milroy's brigade at 8 a. m., or earlier, and in referring to the battle said, "It was a severe one at the start." He witnessed one assault about 2 or 3 p. m. Some fighting, more or less, all day.

Maj. Gen. *Gershom Mott*, United States Volunteers, then colonel Sixth New Jersey Volunteers, Third Brigade, Kearney's division, Heintzelman's corps, says (p. 868) he arrived on the field at noon and heard artillery firing to the left.

Bvt. Brig. Gen. *H. E. Tremaine*, United States Volunteers, then acting assistant adjutant-general Taylor's brigade, Hooker's division, same corps, says he arrived on the field a little before noon (Board's Record, p. 869).

> The troops on the left, which I at that time understood to be General Sigel's, were pretty actively engaged. The troops off to the right, under Kearney, as I then understood, were more or less engaged.

Maj. *Oliver C. Bosbyshell*, then captain Forty-eighth Pennsylvania Volunteers, First Brigade, Second Division (Reno's) of the Ninth Corps (Burnside's) (Board's Record, p. 872), says his regiment went into action at three and lost one-fifth of the men.

1552 Capt. *John C. Brown*, Twentieth Indiana Volunteers, Robinson's brigade, Kearney's division, Heintzelman's corps, says (p. 873) "There was heavy infantry firing on our left and we expected it to strike us." His regiment lost about a hundred.

Maj. Gen. *John C. Robinson*, U. S. A. (retired), then brigadier-general commanding brigade in Kearney's division, says his brigade lost 578 men (Board's Record, p. 834).

The record shows other witnesses to the fact that there was a battle on the 29th August, but these citations seem sufficient to show that there

was fighting all day, artillery and infantry, and on Sigel's front particularly from noon to 3½ p. m.

Maj. *Samuel N. Benjamin*, assistant adjutant-general, U. S. A., then first lieutenant commanding Battery E, Second United States Artillery, says he got into action, as near as he can recollect, about 1 p. m. at Groveton, and for two hours was actively engaged with eighteen guns of the enemy ranging from 1,000 to 1,500 yards from him (Board's Record, p. 613), and that they soon brought in eight more against him.

In discussing a military question it is quite needless to say that the heavy fire of artillery is generally but a prelude to the infantry assault at the moment when the opposing forces are broken or the opposing fire silenced.

It may be that the infantry will remain hours in expectation of such opportunity, while the cannonading continues. Therefore it is the duty of co-operating forces to be ready and to move into action, in order to create such a diversion as will enable the main attack to be successful.

CONFEDERATE ACCOUNTS OF BATTLE.

When we look at the Confederate accounts of the battle of the 29th August, 1862, we find them in perfect accord with those of the Union commanders on the question whether there was a battle that day or not.

In his official report to the Confederate Government of this day's battle, the late General *Robert E. Lee* said (Board's Record, p. 520), "*the battle raged with great fury*"; that, in one part of the field, there were "*several hours of severe fighting*"; that the "contest was close and obstinate"; that "the enemy was repeatedly repulsed, but again pressed on the attack with fresh troops"; that "the battle continued until 9 p. m."; that it was "the darkness of the night" which "put a stop to the engagement," and that his "loss was severe."

All through the report he uses the expressions "battle was raging," "warmly engaged," and "severe contest," showing how this superior military critic viewed the battle of the 29th (Board's Record, p. 519).

Maj. Gen. *A. P. Hill*, in his report to Maj. Gen. T. J. Jackson, dated 25th February, 1863, speaks of the repulse of "six distinct and separate assaults, a portion of the time the men being without a cartridge," and says that "soon his reserves were all in."

A critical examination of all the Confederate reports will not prove uninstructive in this connection.

In examining the testimony of "Confederate" witnesses before this Board, we find further corroboration.

Henry Kyd Douglass, formerly major and assistant adjutant-general to the Confederate General T. J. Jackson, called by government, testified as follows (Board's Record, p. 704):

Q. The force that advanced against A. P. Hill's division—what was its character as to strength and numbers?—A. Well, being on the other side, it would be difficult for me to determine. Whether it was attacked by divisions or brigades, I really do
1553 not know; but there were a number of attacks made, not less, I should suppose, than half a dozen, at different times.

Q. How were those attacks carried on?—A. Those attacks were vigorous dashes; brief, but *very determined, and very gallant.*

Q. How close did the opposing lines get?—A. Very close. Our line was driven back once or twice; then they moved forward again.

Q. What was the character of losses of that day's battle—heavy or light?—A. I think the loss in A. P. Hill's division was heavy enough to be called serious; I should not say it was very heavy or very disastrous.

Q. I understand you to say that the battle lasted from between two and three o'clock up to what time?—A. Dark. There was some little skirmishing or firing after dark, but you cannot call it an attack.

Q. About what time did the final attack begin upon your lines?—A. Do you mean the last assault?

Q. Yes. There were a series of attacks, one after the other?—A. Yes; at different intervals. The first attack was something after two; the last may have been about sundown.

Q. Were the attacks made by heavy bodies of troops or by a light body, comparatively?—A. The attacks covered Hill's division front; with what commands they were made on the other side, I would have hesitation in saying; they were vigorous.

* * * * * * *

Q. At the close of the day's action, on the 29th August, do you recollect what was the state of the supply of ammunition in your division?—A. General A. P. Hill was in a very bad way. His ammunition was in some brigades almost entirely exhausted.

James Longstreet, late lieutenant-general in the Confederate army, so called, says (Board's Record, p. 62):

At the time we approached, General Jackson was engaged in making a very severe fight * * * a severe artillery combat going on. * * * Infantry fight lasted from about 5 o'clock until dark. * * * Knew of no terrific battle raging that day with continuous fury from daylight until after dark that day.

He previously said:

I did not note the time by my watch of any occurrence of that field.

He thus disputes the accuracy of Robert E. Lee's report, but in his own official report dated near Winchester, Va., 10th October, 1862 (Board's Record, p. 521), he said, after describing his march to join Jackson after passing through Thoroughfare Gap on the 29th:

The noise of battle was heard before we reached Gainesville. The march was quickened to the extent of our capacity. The excitement of battle seemed to give new life and strength to our *jaded* men. * * *

His recollection would seem to be very much less vivid and exact than in 1862, for he testified before this Board in reference to that march as follows:

Q. (By RECORDER.) Were your troops in a *jaded* condition at that time?—A. I should hardly think they were.

This witness from his position during the rebellion as an officer of high rank in the rebel army was brought prominently into this case as one whose testimony would apparently have to be considered as conclusive even if it did conflict with that of respectable Union officers.

Two instances have been given of the uncertainty of his recollection, viz:

1. His statements here as to the size of Cadmus M. Wilcox's division, contradicted by the latter.

2. His statements here as to the condition his men were in when they passed through Gainesville, contradicted by his own official report as well as by Col. Thomas L. Rosser (Fifth Virginia Cavalry, 1554 Stuart's division), who testifies (Board's Record, p. 1153) that Longstreet's command came from the direction of Thoroughfare Gap "in a very forced and disordered march * * moving rapidly and straggling badly."

3. A third instance is found in the numbers he says Brig. Gen. Beverly H. Robertson, of Stuart's cavalry division, Jackson's command, had there in his brigade. Longstreet (Board's Record, p. 73) puts them at 3,000, but Robertson himself says he had 2,500 (Board's Record, p. 173).

A fourth instance is found in Longstreet's statement (Board's Record, p. 72) that he has no recollection of seeing any cavalry that day.

John S. Mosby, formerly colonel of Major-General J. E. B. Stuart's staff, testified as follows (Board's Record, p. 887):

Q. When did that battle begin on the 29th—what time of day?—A. Pretty early on the morning of the 29th there was heavy fighting.

Q. How long did that continue?—A. My recollection is that there was heavy fighting during most of the day. Early in the morning I suppose I was about the rear of the center of Jackson's line, and I suppose about eight, or nine, or ten o'clock there came a report that our left flank had been turned, over in the direction of Sudley; I went over there with the First Virginia Cavalry, according to my recollection, for the purpose of checking that, and we were there the whole of the day.

Q. What of the action could you see and hear? Describe all that you can recall of that action.—A. We could not see the fighting. I was with this cavalry, and I suppose we were half a mile, or part of the time within a mile of it. In the morning this regiment that I got with I suppose was not half a mile in the rear of Jackson's line; but when the report came that the Federal cavalry was over on Jackson's left, and there was danger of their capturing his wagons and ambulances that were in the rear of Sudley Church, this cavalry was sent over there to protect Jackson's left, and I went with it.

* * * * * * *

Q. Do you know what the losses of Jackson were in the action?—A. No, sir.

Q. From twelve o'clock noon up to three o'clock in the afternoon, do you recollect the character of the fighting as far as you could judge from the sound?—A. My general recollection of it is that most of the day there was heavy fighting. I cannot particularize.

Q. Musketry and artillery?—A. Musketry and artillery.

Charles Marshall, formerly aid-de-camp to the Confederate General R. E. Lee, having been called for petitioner (Board's Record, p. 1000), in asserting that he was at the Gibbon wood on or about 12 o'clock, and noticing Confederate dead and wounded on the Warrenton pike, said, "There was a good deal of artillery and musketry firing on that road" before he got up there.

The petitioner has been forced to the assertion that there was no battle on the 29th August, 1862 (Opening Statement, pp. 42 and 57), in order to excuse his inaction in consequence of the Count de Paris's rule, cited by me.

Unfortunately for the petitioner, he has advanced too many and contradictory defenses, which can only be explained on the ground that his case as here presented and on his trial is largely an afterthought.

When he was at the Weir House at Manassas Station that morning, conversing with Major-General McDowell (Board's Record, p. 875), the smoke of battle could be seen, and persons there were watching its progress and listening to the cannonading.

The unqualified statement of petitioner that there was no battle on the 29th is positively disproven by two of his own dispatches of that day, found in his own opening statement before this Board, viz:

First. (No. 28, to General Morell.) To push over and aid Sigel. * * * See if you cannot help Sigel. If you find him retiring, move toward Manassas.

Second. (No. 29.) The enemy appear to have driven our forces back, the fire of the enemy having advanced and ours retired. I have determined to withdraw to Manassas.

1555 He says he (petitioner) went to the head of the column, and found he had been misinformed, and no action was therefore taken by him to carry out the determination expressed so positively in that dispatch.

These dispatches are fatal to petitioner's theory, even if Col. E. G. Marshall's evidence alone was not.

We have seen that he undertook, *even earlier in the day*, to carry out the same determination to retire, based *on the same belief as to our repulse.*

If he was misinformed at that second time, as he alleges in his opening statement, *when did he again ascertain we were being beaten on the right? for he sent another recently-discovered dispatch*, addressed to General McDowell OR *King*, in which he said:

How goes the *battle?* It seems to go to our rear.

Does this indicate no knowledge on his part of a battle?

Again, in another newly-discovered dispatch, this time to General McDowell, he said:

> The firing on my right has so far retired that, as I cannot advance and have failed to get over to you, except by the route taken by King, I *shall* withdraw to Manassas.

Did he withdraw as he, in this dispatch, positively announced he would? We shall find that he commenced the movement. In the previous dispatch he said he had determined to withdraw to Manassas. He afterwards concluded not to. In this dispatch to McDowell, dated 6 p. m., he said he did withdraw Morell, who held the advance.

As to whether there was a battle on the 29th, he is precluded from denying it by his own dispatches, officially made at the time, and having failed in proving the alternative expressed by the Count de Paris, was properly convicted of "*shamefully failing to go to the aid of Major-General Pope's troops, and did shamefully retreat and fall back with his army and leave to the disasters of a presumed defeat the said army, and did fail, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the national Capital.*"

It was not necessary he should go back to Manassas Junction, though a considerable portion of his troops did move back by his direct orders.

He put his troops where they were not available, and he did it knowing a battle was—to use the language of General Lee—"raging" at the time.

No argument, however skillful, can influence these facts. General Pope or any of his subordinate corps-commanders may have made movements which to others may not seem to have been as effective as if some other movement had been made. His plan of battle may be criticised, his mode of attack commented upon by unfriendly critics, but none of this has any relation to the petitioner. The duty of the latter was plain and obligatory. He did not do it, and judgment came, the judgment of his peers.

In vain did he on that fatal 29th August go to the point in his column most remote from the sound of the enemy's cannon, and calmly wait the issue between the contending forces with a safe line of retreat open to himself.

Did he hope for a favorable opportunity to come at the last moment to protect a retreat? Such things history shows have happened before.

LONGSTREET'S DEFENSIVE POSITION 29TH AUGUST.

The next point to be considered is the position of the co-operating Confederate forces which arrived on the 29th August to the support of Jackson's hard-pressed troops.

1556 By glancing at the map it will be seen that "Gainesville" was the key to the Confederate position on that day. It was of vital importance to General R. E. Lee—

First. To prevent a flank movement from any portion of the Army of the Potomac, via Warrenton Junction.

Second. To maintain communication with Thoroughfare Gap, through which advancing re-enforcements, including Anderson's division of Longstreet's command, were expected.

General Lee did not and could not properly know what peculiar influences were operating to retard the arrival of additional assistance from the Army of the Potomac. Therefore we find from the official Confederate reports that at 8 a. m., the 29th August, while Lee was still at Thoroughfare Gap, he dispatched Major Hairston, commissary of sub-

sistence on Major-General Stuart's staff, to Warrenton, Va., to ascertain whether any of our Army was there.

The turnpike from Centreville, it will be noticed, passed by the stone house and through Groveton and Gainesville to Warrenton; consequently any Union force from the Rappahannock, via Warrenton, would have struck in his rear and interposed, if in sufficient force, between his command near Gainesville and Thoroughfare Gap.

It was not until 8 p. m., the 29th August, that Lee became apprised that there was no danger from that quarter.

The following is the report (Board's Record, p. 540):

REPORT OF MAJOR S. H. HAIRSTON, DIVISION QUARTERMASTER, STUART'S CAVALRY DIVISION.

GAINVESILLE, *August* 29, 1862—8 p. m.

To Colonel CHILTON, *A. A. G.:*

In obedience to General Lee's order I started this morning at eight o'clock with one hundred and fifty cavalry to go to Warrenton, "to find out if any of the enemy's forces were still in the vicinity of that place." I went from Thoroughfare to the right on a by-road, which took me into the Winchester road two miles below Warrenton, and came up to the rear of the town. I inquired of the citizens and persons I met on the way, but could not hear that any of their forces were in the vicinity of that place. They informed me that the last left yesterday in the direction of Gainesville and Warrenton Junction. We picked up on the way forty-six prisoners, thirty muskets and rifles, one deserter from the Stuart horse artillery, and one sutler, with his wagon and driver. I also paroled two lieutenants in Warrenton, who are too sick to travel. What shall I do with the prisoners?

SAMUEL H. HAIRSTON,
Major Commanding, by order of General Lee.

NOTE.—This was made of men from every regiment in your command, with one entire company, headed by the captain, that General Lee had handled at Thoroughfare and turned over to me when he ordered me to go on the expedition. S. H. H.

On the 29th August, therefore, the Confederate General in Chief may be said to have been fighting what General Pope termed a "defensive" battle, because he had not all his forces available, viz: the large divisions of Maj. Gen. D. H. Hill, consisting of five brigades with artillery; Maj. Gen. L. McLaws' of four brigades, and Maj. Gen. R. H. Anderson's "very full division" of Maj. Gen. Longstreet's special command (Board's Record, p. 61).

Already had Heintzelman's corps, and Reno's division of Burnside's corps, Reynolds' division of Pennsylvania Reserves, and petitioner's corps, all of the Army of the Potomac, joined General Pope from the Peninsula.

Sumner's corps (second) and Franklin's corps (sixth) and the remainder of the Army of the Potomac had been afforded reasonable time to evacuate Harrison's Landing on James River and come into position, and the latter was at Alexandria.

1557 At that time there were no regular *corps* organizations in the Confederate army (Board's Record, p. 950), and the senior division commanders commanded the right and left wings and center of the army.

The fact that Lee left all his reserve artillery under Col. Stephen D. Lee at Thoroughfare Gap on the 29th, shows that he was not prepared for an offensive movement against unknown forces (Board's Record, p. 120).

Part of the forces which came up to Gainesville on the 29th appear, according to Longstreet's testimony, if his recollection is reliable, to have arrived at Thoroughfare Gap nearly half a day before attempting to shove through.

He testified as follows (Board's Record, p. 70) on cross-examination:

Q. Was not the delay at Thoroughfare Gap for half a day due partially at least to the uncertainty as to General Pope's movements?—A. I think it must have been.

Q. Would you not have been likely to know, being one of the two superior commanders?—A. I would be likely to know if General Lee expressed an opinion as to the occasion of the delay, more likely than anybody else. I think if he had known that Jackson was pressed and wanted re-enforcements he would not have allowed us to halt on the west side of the gap. I think it is probably because he did not know anything about it that we were detained there. If he had expected that gap would have been occupied by Pope's troops, we would have moved immediately through. I think we had some mounted stragglers who had been out to the front and reported to us that there was nothing up there in that direction, and we were a little surprised when we found our troops driven back into the gap on the afternoon of the 28th.

Q. Then you are not prepared to say whether or not your delay there was due partially to the fact that General Lee was not aware exactly of the movements of General Pope?—A. All those things, you know, have their relations one to another.

(Also Board's Record, p. 157, Charles Marshall's evidence.)

Longstreet further testified (Board's Record, p. 68), on cross-examination, that when he heard, on the 26th August, of Major-General Jackson having been detached to make the movement around to the rear of General Pope's army he expressed considerable surprise to Lee, and intimated his opinion that Jackson was in a very hazardous position and liable to be cut off.

That Lee was apprehensive for Jackson's safety is evident from the fact of his sending a dispatch to the latter.

William W. Blackford, then captain of engineers in the Confederate service, called by government, testified as follows (Board's Record, p. 693):

Q. Can you fix, with any degree of certainty, about what time in the morning that was?—A. No, sir; not exactly. The only thing I recollect about it is that it was early in the day. We had been looking to Longstreet's coming with a great deal of anxiety, and I recollect the feeling of relief that I had when Stuart told me that he was going to open communication with him; and the impression made upon my mind at the time was that it was sufficiently early in the day for him to be there by any time within which the enemy would probably make an attack.

* * * * * * *

Q. Can you swear at all as to the hour at which you met General Lee before reaching Gainesville?—A. No, sir; I could not swear to the exact hour, except that it was quite early in the day.

Q. What fixes it in your mind that it was quite early in the day?—A. The fact that we had been rather nervous about Longstreet's joining us; and as soon as I heard that we were going out to open communication to meet General Lee, I recollect the feeling of relief that I had in knowing that that junction would be made so soon in the day.

* * * * * * *

Q. You say that the morning of the 29th you were nervous about Longstreet's
1558 joining you, and that you experienced a feeling of relief when you found that you were going to join him. What do you have reference to?—A. Jackson had been occupying an isolated position there, and we were anxious for Longstreet to rejoin us. We knew that the enemy were concentrating, and we were anxious for our concentration to take place too.

* * * * * * *

Q. Was it the time you left the turnpike in company with General Stuart to go down to make this reconnaissance that I am to understand a division of Longstreet's troops had already passed the point where you were?—A. I suppose a division had passed. I know while standing there the men were very anxious to know what news there was from Jackson, and we were standing on the turnpike telling them as they passed. Then they would cheer. That was the first intelligence they had of Jackson's safety.

Alexander D. Payne, then first lieutenant Fourth Virginia Cavalry, commanding Lee's body-guard, called by petitioner, on cross-examination said (Board's Record, p. 381):

I have reason to know that General Lee was very uneasy about General Jackson all the day before.

Capt. *Robert McEldowney*, Twenty-seventh Virginia Confederate Infantry, says (Board's Record, p. 951) that, on the 29th, Jackson's command was in "a rather exhausted condition," and Col. Henry Kyd Douglas, assistant adjutant-general that day with Jackson, says the latter that morning was "rather trying to avoid" an engagement (Board's Record, p. 707).

As Major-General Sigel, by General Pope's orders, attacked Jackson at daylight of the 29th, and as the night before Ricketts' and King's divisions were so interposed as to prevent Jackson's withdrawal, Lee was forced to come up sufficiently near to prevent Jackson being crushed; *but not knowing what forces he had to contend with he remained in such a position as to cover Gainesville and protect his line of communication with Thoroughfare Gap.*

This is the explanation why his co-operating divisions under Wilcox, Kemper, Jones, and Hood, comprising part of Longstreet's command, were not shoved into action.

They were strong enough to hold open the line of retreat for Jackson, and towards evening, at sunset, Hood's division and Evans' brigade, supported by Wilcox's, was ordered to attack one of McDowell's divisions (King's), under Hatch, down the Warrenton pike, but was anticipated by the latter (Board's Record, p. 529).

For Longstreet to say that General Lee was very anxious for him to bring on a battle on the 29th, is to say that which is very unlikely to have been the actual case (Board's Record, p. 64).

1st. Because Lee did not know how many or where all the Union forces then were.

2d. Because petitioner's corps was on his right flank.

3d. Because Banks' corps, over ten thousand strong, was also on his right flank at Bristoe, on a *direct* road into Gainesville in his rear, and not more than five miles from it.

That he may have desired Longstreet to make some tentative movement to develop the strength of the opposing Union forces is not improbable.

Even on the next day (30th August) after his reserve artillery and Anderson's division had joined him and he felt assured that there was no army of the Potomac corps coming up from the Rappahannock, through Warrenton on to his rear, he did not attack, but awaited the attack which General Pope made in the afternoon.

With this insight into the plans of the Confederate general, his operations on the 29th can be readily understood, and we can see
1559 why Wilcox's, Kemper's, and Jones' divisions never fired a shot on the 29th (Board's Record, p. 232), while Jackson's command on the other hand expended quite all their ammunition (Board's Record, p. 707).

Longstreet makes a *very* significant admission in his evidence. He says that with Lee's permission he made a personal reconnaissance and got as far forward along by Young's Branch as he dared venture, and thought there was a force along above the Warrenton and Gainesville pike—artillery, and infantry too—"a considerable force," and that it would be a *little hazardous* to make a front attack, that is making a parallel battery, throwing his troops forward so as to breast the storm. So he reported to General Lee that he had some doubt of their being able to carry the position (Board's Record, p. 63).

While he and Lee were still discussing this, he says General Stuart sent—

> A report of the advance of a force against his right.
> As soon as that came, General Lee ordered him (Longstreet) to cross to that point to re-enforce it, which he did with three brigades under Wilcox.

Now Longstreet, in his official report, dated 10th October, 1862, puts this circumstance at a *late hour* in the day. This is what his report says (Board's Record, p. 521):

> Three brigades, under General Wilcox, were thrown forward to the support of the left, and three others, under General Kemper, to the support of the right of these commands. General D. R. Jones' division was placed upon the Manassas Gap Railroad to the right and in echelon with regard to the three last brigades. Colonel Walton placed his batteries in a commanding position between my line and that of General Jackson, and engaged the enemy for several hours in a severe and successful artillery duel. At a late hour in the day Major-General Stuart reported the approach of the enemy in heavy columns against my extreme right. I withdrew General Wilcox, with his three brigades, from the left, and placed his command in position to support Jones in case of an attack against my right. After some few shots the enemy withdrew his forces, moving them around towards his front, and about four o'clock in the afternoon began to press forward against General Jackson's position. Wilcox's brigades were moved back to their former position, and Hood's two brigades, supported by Evans, were quickly pressed forward to the attack.

The expression at a "late hour" is somewhat indefinite—though it is quite unlikely he could have intended it to apply to as early an hour in the afternoon even as 2 o'clock, at which he now puts it (p. 72)—yet he says before this Board that this advance reported by Stuart was what he *afterwards learned* to be McDowell's and petitioner's forces on the Manassas and Gainesville dirt road (Board's Record, p. 63).

Unfortunately the information which he received *afterward* does not correspond with the facts, as neither petitioner nor General McDowell made any advance whatever on that road after noon.

We are left in no doubt as to the time when Stuart made a report of the advance of Union forces on Longstreet's right, because Cadmus M. Wilcox, one of Longstreet's division commanders (Board's Record, p. 530), who had been stationed with his division a considerable time in reserve on the north of the Warrenton turnpike, in his official report, dated 11th October, 1862, said as follows relative to his own three brigades:

> At half past four or five p. m. the three brigades were moved across to the right of the turnpike, a mile or more, to the Manassas Gap Railroad. While here musketry was heard to our left, on the turnpike. This firing continued, with more or less vivacity, until sundown. Now the command was ordered back to the turnpike and forward on this to the support of General Hood, who had become engaged with the enemy, and had driven him back some distance, inflicting severe loss upon him, being checked in his successes by the darkness of the night.

1560 Before this Board, Wilcox, who was one of petitioner's witnesses, also testified as to this movement of his division as follows:

> Q. Next after that what order did you get?—A. In *the afternoon, about half past four or five*, I was moved over to the right of the pike. * * * (Board's Record, p. 230). I remained there until near sundown. Meantime there had been some musketry heard on the pike, &c.

He thus corroborates his official report in this interesting particular and fixes the hour.

Longstreet, on cross-examination (Board's Record, p. 68), said he was informed of the position of petitioner's troops about 2 o'clock p. m.

If, as soon as his divisions were all deployed, Lee wanted him, ac-

cording to his statement, to bring on a general engagement, and if he took a little time to make a reconnaissance of the ground and reported at once to Lee on the field, and while discussing the matter received Stuart's report at what he himself terms a "late hour in the day," it is plain—

First. That his troops were not all up from Gainseville so as to be deployed into line before 3 p. m.—possibly nearer 4 p. m.—despite the earlier hour given by him; because, according to Col. *E. G. Marshall*, Thirteenth New York Volunteers (now colonel, U. S. A., retired), petitioner's witness, who commanded the latter's skirmish-line, the enemy's "*force continued to come down all day, in fact until one o'clock at night*" (G. C. M. Record, p. 190); and Major *George Hyland jr.*, same regiment, another of petitioner's witnesses on the latter's trial, who had been on the skirmish-line, swore as follows:

> Q. (By ACCUSED.) Do you know at what hour they [the enemy] commenced forming, or about what hour?—A. They *commenced* forming between *two* and *three* o'clock, I think (G. C. M. Record, p. 174).

Thus two of the best informed officers under petitioner confirmed this particular evidence of Longstreet.

Brigadier-General Charles Griffin, United States Volunteers, another of petitioner's witnesses on his trial, said (G. C. M. Record, p. 163):

> That heavy bodies of troops were passing from Thoroughfare Gap down towards our front all day long—that is, that they passed. Some of them may have been three miles, some of them may have been five miles, and some of them may not have been over 2,000 yards from us.

Therefore, all of Longstreet's assumed 25,000 men could not have been up in position by 1 or 2 or 3 p. m.

Second. It is also plain that when Longstreet made his reconnaissance about 2 p. m. he gave no heed or attention to the position where petitioner's corps was lying inactive, quite out of sight, but devoted his attention to the Union forces near the Warrenton, Gainesville, Groveton and Centreville turnpike.

This, we shall see, harmonizes exactly with the evidence of distinguished Union officers who have testified in this case.

Third. It is also plain that it was the presence of Union troops wholly north of petitioner's position which made Longstreet reluctant to attack, and induced him to tell Lee it would be a "little hazardous."

This fact, with the report between 4 and 4½ p. m. of the advance from Bristoe toward Gainesville, toward Lee's rear, of the brigade of observation sent out by Major-General N. P. Banks, United States Volunteers, caused the Confederate Commander to maintain his condition of inaction until apprehension from that quarter had disappeared, and at sunset he shoved in down the pike Hood's division and Evans' brigade, with Wilcox's division as support, into an action with King's division,
1561 near the Gibbon wood, which lasted, according to General Lee's and other official reports, until NINE P. M. (Board's Record pp. 521, 537). Longstreet also puts it until 9 p. m., in his report.

As, after noon, it is certain that petitioner's corps were kept by him in a state of complete inactivity, stretched in column along a road concealed by woods for at least three miles to the rear, it is quite clear that Lee and Longstreet gave him no attention.

If, as Longstreet says, a reconnaissance to his front, near the Warrenton pike, made him believe a front attack, even with his assumed 25,000 men, would be "hazardous," the inquiry naturally suggests itself, What would have been the consequences to his command had the petitioner pushed *forward* on his (Longstreet's) right flank, supported as he would

have been by the gallant Reynolds, with his division attached to McDowell's corps, and by Schenck's division of Sigel's corps and Stevens' brigade of Reno, all of which were south of the Warrenton turnpike, and supported by King's division of McDowell's corps?

All our movements of the left wing south of the Warrenton turnpike were absolutely paralyzed that day and rendered of no avail in consequence of petitioner's lamentable failure.

His pretense that his skillful arrangements to put his own forces out of sight and in a "defensive" position, so as to *hold* the enemy in his front, while at the same time, on the right flank of General Pope's Army, assault after assault was being made on the Confederate lines, is a pretense such as was, possibly, never before ventured upon in a judicial investigation by any defendant having military training.

Indeed, his own witness, *Charles Marshall*, aide-de-camp to Lee, says (Board's Record, p. 171), on his (petitioner's) assumption of facts, that Lee withdrew Wilcox's division of Longstreet's command from the right late in the afternoon and sent him up on to the pike to support Hood, *because he believed "there would be no further movement against his right."*

Brig. Gen. *John Buford*, U. S. Volunteers, petitioner's original witness, did, as appears of record, observe the advance of Longstreet and Lee through Gainesville on the 29th August, and estimated their numbers liberally at 14,000.

Cadmus M. Wilcox, division commander under Longstreet (petitioner's witness), testifies that the brigades and divisions were all together (Board's Record, p. 230).

Longstreet, and *Charles U. Williams*, then aide-de-camp to D. R. Jones, another division commander (both petitioner's witnesses), confirm this (Board's Record, pp. 60, 221).

Buford's estimate and report, made from personal and careful observation at the time, is much more reliable than the recollection of these Confederates, which, as we have seen, varied among themselves to the extent of several thousands.

Buford testified in 1862 that the cavalry with that marching column was about 500 (G. C. M. Record, p. 188); and also so reported to Major-General McDowell on the morning of the 29th August; yet Beverly H. Robertson and Longstreet *each*, as we have seen, *put it now*, from recollection merely, as respectively 2,500 and 3,000.

These discrepancies are glaring.

At the close of the evidence before this Board (3d January) petitioner reproduced the witness Leachman, and inquired, not however in surrebuttal of anything developed during the recess, as to the character of the country behind Pageland Lane, which he declared to be a "morass." He also previously said (Board's Record, p. 141), men could only have

> gone down the Manassas Gap Railroad to J. W. Jeffers' in single
> 1562 file, as the culverts were open; and yet, we know, General McDowell galloped rapidly down.

His reliability is further exemplified when cross-questioned as to "Monroe's" or Stuart's Hill, which overlooks his house (Board's Record, p. 142):

> Q. Is there any commanding elevation south from the Warrenton pike from which you can see Centreville?—A. No, sir; not in the topography of the country at that time, nor is there now.

As to the ground west of Pageland Lane, Longstreet himself indicates that he came into position back of it, and threw out one battery northwest of Pageland Lane (Board's Record, p. 68). The Board has got to take what may, for explanation, be termed "judicial" notice of the char-

acter of the country, and I insist that the country back of Pageland Lane is high ground.

James Mitchell, formerly a captain, First Virginia Volunteers, Kemper's division, called by petitioner (Board's Record, p. 385), says that to the best of his recollection they must have advanced to *near* Pageland Lane, and then filed on to the right and passed down an old and unfrequented road for some distance, and then diverged into the fields through the woods. Further on he said as follows (Board's Record, p. 386):

I saw no Federal troops at all that day.

This is the only witness who has been produced in this case from Kemper's division of Longstreet's command, and his statement shows conclusively how far back that division must have been placed, so far as the battle was concerned.

The *position* of the portion of Longstreet's command which arrived near the field on this 29th of August, is only indirectly of importance.

Assuming it to have been as far east as the easterly edge of the "Gibbon wood," where petitioner seeks to put it, such position would only have put the petitioner in a better position to attack the enemy's flank and possible rear, than the position actually taken by Longstreet as indicated by me.

Some few of the Confederates brought before this Board by petitioner give evidence directly contradictory to that formerly and now given by Union officers, as indicative of the enemy's position. And this evidence of the Union officers is supported by that of citizens and Confederates.

It must be remembered that the enemy occupied substantially the same ground for two days, having been moved back or forward in some instances half a mile or more.

On the other hand, the Union officers were up on that line only *one day*. Consequently there is no possibility of confusion when they indicate that they were located in a particular position.

As to the Confederates, there is strong probability that what was said, for example, by Charles Marshall, of Lee's staff (Board's Record, pp. 158, 995), as to Longstreet's position, really referred to the 30th instead of the 29th August.

A good illustration of this is found in the Rev. Franklin Stringfellow's testimony (Board's Record, p. 1034). He was on duty with Maj. Gen. J. E. B. Stuart, mentioned several incidents which occurred, and gives his recollection of seeing regiments in position back of Pageland Lane, yet when he came to describe positions subsequent to the first seen by him, he became confused; and confounded the two days' battles so completely as to ask to have his testimony not considered.

There is great discrepancy between petitioner's witnesses Longstreet and Chas. Marshall as to the former's station.

1563 *Longstreet* (Board's Record, p. 68) put his line on the easterly slope of the Douglas Browner house hill (where it would have been exposed to the fire of the Union batteries), and carried it down on a line with Meadowville Lane. (See his map.)

Chas. Marshall, equally positive, puts Longstreet far in advance of Longstreet himself and to the east edge of the "Gibbon" wood (Board's Record, pp. 157, 240, and 1000) by 11 a. m.

However (Board's Record, p. 996), in another part of his testimony, he says that some time on the 29th or 30th, *he does not recollect which*, he was sent on a certain duty.

Alexander D. Payne, formerly first lieutenant Fourth Virginia Confederate Cavalry, commanding Lee's guards, having been called for peti-

tioner, says (Board's Record, p. 382) that Hood's division formed in the Gibbon wood, very soon after Lee got there, between 10 and 11 a. m., nearer 10.

Jubal A. Early, then brigadier-general Confederate service, a government witness, says (Board's Record, p. 850) that Hood came up about 11 a. m. He further testifies as follows:

I moved my own brigade across Pageland road and waited there some time until these two regiments [Thirteenth and Thirty-first Virginia Infantry] could be withdrawn; their place had to be supplied by some other troops on the flank.

I suppose it was in the afternoon sometime, before those regiments got there. I lay there waiting for *some time* and then moved off to the left in the rear of our line.

It will be noticed that these two regiments of Early's had been early in the day pushed down to guard Jackson's right flank.

Henry Kyd Douglas, assistant adjutant-general to Maj. Gen. T. J. Jackson on the 29th August, a government witness, testified as follows (Board's Record, p. 705):

Q. Do you recollect seeing General Longstreet coming into position?—A. I do not. I don't recollect seeing General Longstreet until about the time Hood's command became involved, late in the evening. I think I had gone to General Jackson, and was sent to Longstreet to see what that was.

Q. That was along the line of attack?—A. That was rather on Longstreet's left. There was a gap between Jackson's right and the position taken by Longstreet. That gap was a *series of hills*, as far as I can recollect, occupied by artillery controlled by Colonel Kirchner, Jackson's chief of staff. I have not been there since the war. I do not attempt to be accurate about topographical features.

William W. Blackford, then captain of engineers, on Stuart's staff, subsequently lieutenant-colonel of engineers, a government witness (Board's Record, p. 701), when asked whether, according to his recollection, the Confederate lines included Cundiffe's and the ravine near "Meadowville Lane," answered as follows:

A. Longstreet's first line was back of that; I think his first line was in *these* woods. [West of Pageland Lane.]

This witness had, just before testifying, been on the ground (Board's Record, p. 696), and knew the country.

Lewis B. Carrico, who resides on the battle-ground, called by government, testified as follows (Board's Record, p. 982):

Q. Where do you reside?—A. Prince William County, Virginia.

Q. Where did you reside on the 29th of August, 1862?—A. Where I now reside, very near the Manassas Gap Railroad.

Q. Were you there on that day?—A. I was.

Q. Up to what hour in the day did you remain there?—A. I was there until very late Friday evening.

1564 Q. During that day did you see any Confederate forces? If so, where?—A. I saw some cavalry scouts during that day, and in the evening there was a battery firing some 75 or 80 yards back of my house, just west of my house, and an officer came there and told me I was in danger, and to take my family and go back of the line.

Q. Where did you go then?—A. I went up the road about a mile, to a farm owned now by Major Nutt.

Q. Towards Gainesville?—A. Between there and Gainesville.

Q. Did you meet any Confederate force on that trip? If so, about where?—A. I saw them a little beyond Hampton Cole's, a very small number. They were sitting down on the side of the railroad, and their battery, that was planted at the back of my house—that opened upon the Federal troops directly after I passed it; and when I got up there against them, they got up and took shelter on the embankment of the railroad.

Q. Did you at that time see any troops to the south of the railroad?—A. None at all except a little picket force that was a little to the south of the railroad, just above there; a small picket force.

Q. Did any Confederate force pass to the east of your house during the day? If so, in what direction did they go?—A. I saw none pass to the eastward. I saw some

shelling from the back of what is called the Britt farm, and a disabled Federal wagon at the mouth of a lane called Compton's lane.

Q. About what time in the day was that?—A. I could hardly say; twelve or one o'clock.

* * * * * * *

Q. What do you mean by the expression "evening"?—A. I mean something like three or four o'clock; somewhere thereabouts.

Q. How do you fix the time?—A. I fix the time by having to leave home, and having to go the small distance I did go.

* * * * * * *

Q. What room did you stay in?—A. I was all over the house; very often up-stairs, looking out of the window.

Q. Which way?—A. Towards Dawkins' Branch.

* * * * * * *

Q. What time was the cannon posted there?—A. Possibly four o'clock.

Q. You are positive about that?—A. I am not positive; but according to the best of my judgment it was probably as late as four.

Q. Was it earlier or later than four?—A. It was not earlier, I do not think; not earlier than three I am very sure.

* * * * * * *

Q. Were there any soldiers of any description about your house, except the battery?—A. On Friday there was a Federal force in Mr. Lewis' field, to the east of my house.

Q. Where was Lewis' field?—A. Within 300 or 400 yards to the east of my house.

Q. Were there any about your house?—A. Yes; there were some of the Federal forces: two men that I had had some acquaintance with, who were in my house when this wagon was disabled at the end of Compton's lane.

* * * * * * *

Q. About where is the place where you carried your family?—A. Immediately at the Manassas Railroad, one mile past Hampton Cole's.

Q. You say you did not meet any considerable body of the Confederate force on your way there?—A. Yes; I do say it; and I saw no considerable body there as I stated to you and General Porter, if he was with you, until I got home next morning, about sun-up. They came there to my house and destroyed a great deal.

William T. Monroe, residing on "Stuart's Hill," called by government, testified as follows (Board's Record, p. 986):

Q. Do you recollect anything of the occurrences of the 29th of August, 1862?—A. I recollect about eleven o'clock General Longstreet's troops first came in there, or about twelve: I reckon that battery was posted on that hill—it may have been a little earlier, but not later than twelve o'clock.

1565 Q. Do you know in what direction that battery was fired?—A. It fired in the direction of Groveton.

Q. Did it continue to fire in that direction?—A. It fired in that direction some hour, or maybe more.

Q. Do you know where it went to from that point?—A. It went down by, just into the depot which is now upon the railroad, and from there to the hill at the Britt house.

Q. Did you see it there in position?—A. At the Britt house? Yes.

Q. In which direction did it fire from there?—A. At first it fired in the direction of the Lewis house. [Witness indicates Leachman's.] Whether it fired in that direction all the time, I don't know.

Q. You did not see it fire in any other direction?—A. No, sir; the Federal troops at the time were around the Leachman house, and this battery graped them, fired grape and canister.

Q. Did you know where the Confederate lines were, or forces, on that day, aside from that particular battery that finally got down to the Britt house?—A. There was infantry just in here, running from the Warrenton and Gainesville pike [back of Pageland lane]. There was an army-road running through there, and then they were posted on this road. [Witness marks the map.]

Q. Do you know how far down they were posted?—A. I don't know. [Witness closes his marking at the road just northwest of Charles Randall's.] The skirmish line was drawn down as far as Vessel's.

Q. When did you first see the Confederate lines advance beyond Pageland lane during that day—the infantry?—A. I don't know when this part of the line advanced at all. [Down near the railroad.] It moved down under the hill, out of sight of the house. I did not see them.

Q. Off in what direction?—A. Off in this way, I suppose. [In the direction of Hampton Cole's.]

Q. Down along the railroad, do you say?—A. They moved in that direction, down along the railroad.

Q. About what time of day was that?—A. I would not say positively. I think it was about the middle of the afternoon, say three or four o'clock.

Q. You were describing some portion of the line that you did see.—A. This portion of the line marched through by the house—that was about three o'clock. [The line just north of the house.]

Q. That portion of the line between your house and the turnpike, you mean?—A. Yes, sir.

Q. Marched to the front about four o'clock?—A. I think it was General Hunton's brigade. General Hunton was along with the brigade, and I thought he was commanding.

Q. Do you know of the advance of any of the other Confederate forces that day, during the day?—A. I do not.

* * * * * * *

Cross-examination:

Q. How do you fix the time of the arrival of the Confederate force by your house in the morning?—A. The first came in about ten o'clock.

Q. Where did they come?—A. Marched around in here then. [On the army road.] But by eleven o'clock that line was formed, and the troops were lying there in the line of battle.

Q. How do you fix those times?—A. Well, I had a time-piece.

Q. Did you look at the clock?—A. I do not say that it was exactly that time.

Q. It was in reference to the clock that you fixed it at about that time?—A. Yes.

Q. How far down had they formed—down the railroad—by ten or eleven o'clock?—A. They had formed down as far as the railroad by eleven o'clock.

Q. How long did they remain there?—A. I know that they were there about one. When they left I don't know. That had gone about four o'clock.

Q. Did you hear any cannonading anywhere within a mile to the south or southeast of your place before their arrival?—A. I did not.

1566 Q. Did you hear any firing of guns off towards Carrico's house at or about the time of their arrival?—A. I didn't hear until after they arrived.

Q. How long after?—A. Some hour; maybe hour and a half.

Q. Did you hear any about three or four o'clock in the afternoon at Carrico's house?—A. Yes; I heard that. But the first guns I heard at all were—well, I heard this battery.

Q. I do not refer to the battery near your house.—A. The first fire I heard after that was one o'clock.

Q. Where was that?—A. That was off here in the direction of Dawkins' Branch.

Q. Can you see Dawkins' Branch from your house?—A. No, sir; we cannot see the branch, but we can see the hills on both sides.

Q. Can you see the hill near Dawkins' Branch?—A. Yes, sir.

* * * * * * *

Q. Do you know of any firing by Carrico's house about twelve o'clock? * * * * * * * A. I know there was none at twelve or one o'clock, either.

* * * * * * *

Q. Do you know that all that arrived there remained there until one o'clock?—A. I know they staid there on this part of the line until one o'clock.

Q. The whole force that was there?—A. I understood the skirmish line.

* * * * * * *

Q. Could you see from your house to Hampton Cole's?—A. Very plainly.

Q. Could you see any lines of troops that would be formed along what is called Meadowville lane?—A. I did not see any troops at all formed along Meadowville lane, but about some time between three and four o'clock there were some Confederate troops formed right along here in the woods [south of Hampton Cole's], I think one regiment.

* * * * * * *

Q. Did you see the effect of the fire from the hill near your house in the direction of Groveton?—A. I saw that there was infantry in this field [east of Gibbon's battle-ground], lying along in there [south of the pike]. When this battery commenced firing, they got back into the woods.

Q. You mean along the branch running up from Lewis' lane No. 1 towards the letter "V" in "Gainesville"—the line was just alongside of the strip of woods between the branch and that?—A. *Right along in the edge of the woods.* [Witness marks the point on the Douglass Pope map as "Monroe."] That was about 12 o'clock.

Q. They retired then?—A. Yes; they got back into the woods.

Q. How long did you remain where you could see the direction of that firing?—A. Just as long as that battery was on the hill. That was some hour and a half.

* * * * * * *

Q. How do you fix the time of the advance of a Confederate force from behind your house at three or four o'clock?—A. I don't know when they moved, but about 4 they

were gone. They were there as late as one o'clock, and at four o'clock they were gone.

* * * * * * *

Q. If troops had been lying along here parallel with and east of Pageland lane, west of Meadowville lane, in the direction of Douglass Hill, would you have been able to see them?—A. I would if they had been in here. [East of Pageland lane, west of Meadowville lane, and parallel to Pageland lane, about midway between.]

* * * * * * *

By the PRESIDENT OF THE BOARD:

Q. The troops you saw coming up marched along what road?—A. I did not see them march at all. When I first saw them they were standing in line, back of Pageland lane.

Q. That was about what time?—A. Between ten and eleven o'clock.

Q. The first you saw was the skirmish line?—A. The first troops I saw was the skirmish line.

1567 From the evidence of *Lewis B. Carrico* it appears:

1st. That during the day some of the Union soldiers came to his house.

2d. That the first Confederates who came near his house did so in the afternoon between 3 and 4 o'clock, although he saw some scouts possibly earlier.

3d. That a Confederate battery was not posted back of his house until about 4 p. m.; and

4th. That the first Confederate troops he saw were a little beyond Hampton Cole's when he went back at that time towards Gainesville.

5th. That he saw some shelling from back of the "Britt" farm.

6th. That there were some Union troops in the Lewis fields.

From the evidence of *William T. Monroe* it appears:

1st. That Longstreet's troops came into position back of Pageland lane between 11 and 12 m.

2d. That Longstreet's troops formed down the railroad about 10 or 11 a. m., and were there about 1 p. m.

3d. That a battery was placed on the hill and fired first towards Groveton, for an hour, maybe more, and then moved down first near the depot on the railroad, and then to the Britt House, from whence it fired for a time in the direction of the Lewis-Leachman house.

4th. That some of Longstreet's forces moved, he supposes, in the direction of Hampton Cole's, somewhere between 3 and 4 p. m.

5th. That about 4 p. m. Hunton's brigade moved forward.

6th. Some time between 3 and 4 p. m. there were some Confederate troops along in the roads south of Hampton Cole's, he thinks one regiment.

7th. He noticed effect of firing on Union forces between Gibbon battle-ground and strip of woods east.

The battery continued firing an hour and a half.

Bushrod W. Frobel, then major commanding artillery of Hood's Confederate division, Longstreet's command, a government witness, says that he was ordered to go to the right or south of the Warrenton turnpike, somewhere between 10 o'clock and noon or about 11 o'clock.

He then testifies as follows (Board's Record, p. 709):

A. I was ordered by General Byrne to General J. E. B. Stuart, and Captain Johnson, of General Lee's staff, was sent with me to show me where I could find him.

Q. Where did you find J. E. B. Stuart?—A. I found him near the Manassas Railroad. I stated in that report that it was near the Orange Railroad; it was a mistake, owing to not having a map to refer to. It was near the Manassas Railroad.

Q. What then transpired?—A. He said the enemy were advancing up the road and for me to go into position and fire.

Q. What road did you understand the enemy were advancing on?—A. I don't recollect. My impression is now some one told us they were advancing on what was called the Ocoquan.

Q. From what direction?—A. The direction of Manassas Junction.

Q. What did you then do after you came into position?—A. I fired about fifteen or twenty rounds.

Q. Where was General Lee at this time?—A. He came over there just about the close of the firing.

Q. Did he have anthing to say in reference to the firing?—A. I think he told us not to waste any ammunition; that we would have a use for it before the day was over.

Q. When you fired those shots in what direction did you fire them?—A. As near as I can recollect it was in the direction of the railroad; pretty nearly in the direction in which the railroad passed.

1568 Q. What did the Federal troops that were advancing do when you fired?—A. I think they commenced to retire and moved, as near as I can recollect, toward our left and their right.

Q. What was it that prevented your seeing the direction of that attack?—A. Woods.

Q. The woods near which they were?—A. Yes.

Q. Were they deployed when you saw them or were they advancing?—A. We could see them, very indistinctly indeed, to the rear of the woods; it seemed as if they were advancing. After they got into the woods, we could not see at all.

Q. How long did you remain in that position?—A. I don't recollect; probably an hour.

Q. Was there any return to this artillery fire of yours?—A. No, sir.

Between Major Frobel and Mr. Munroe there is a contradiction as to the point to which Frobel fired. However, he says his impression is that some one at the time told him our forces were advancing on the Ocoquan road, which is designated on the map as the "Manassas and Gainesville" dirt road.

The time at which he places himself on Munroe's or Stuart's Hill corresponds to the time of arrival of the head of petitioner's column on the ridge back of Dawkins' Branch.

We must not forget that it appears in evidence (see Mr. Wheeler's latest testimony, corroborated by Leachman's, if the latter's evidence is reliable in anything) that the Manassas Gap Railroad at Dawkins' Branch could be seen from Munroe's or Stuart's Hill, and also several hundred yards towards the Manassas and Gainesville dirt road, and the ridge back of the branch along which Griffin's brigade, after McDowell left, moved up to and across the railroad into the little pine bushes which, without exploration *of any kind on the part of anybody*, were found sufficient pretended obstacle to prevent the infantry complying with General McDowell's orders given before he left, to go into action where the dust indicated the arrival of reinforcements to Jackson.

Col. *Thomas L. Rosser*, Fifth Virginia Cavalry, Stuart's division, a government witness, testified, from Saint Paul, Minn., as follows:

7th interrogatory. Where were you at daylight on the morning of the twenty-ninth of August, eighteen hundred and sixty-two?—A. I was on Jackson's extreme right, with pickets under my command, on the Alexandria and Warrenton turnpike, and other roads leading in from the direction of the Orange and Alexandria Railroad.

8th interrogatory. Do you know where Sudley Church is? If so, where were you in reference to that point?—A. I do; and I was further up the stream, and to the west of the church.

9th interrogatory. Did you join General Stuart that morning? If so, state at what time, and narrate what happened.—A. At daylight I moved out, crossing the Alexandria and Warrenton turnpike, and occupied a road leading off to Manassas Junction, a mile or two beyond the turnpike. At this point, about ten o'clock, I was joined by Stuart and his staff. Longstreet's command was coming in in a very forced and disordered march from the direction of Thoroughfare Gap, moving rapidly and straggling badly. My position was taken up with reference to their protection from a gun of the enemy who were in my front. When Stuart joined me, he notified me that the enemy was moving upon our right flank, and ordered me to move my command up and down the dusty road, and to drag brush, and thus create a heavy dust as though troops were in motion. I kept this up at least four or five hours.

10th interrogatory. Did you see Capt. John Pelham, or Major Patrick, or both, that morning? If so, where, under what circumstances, and what did they do to your knowledge?—A. I do not remember Patrick. Pelham came to where I was, late in the day, with some artillery, and was moved out to the right, where he engaged the

enemy. There was firing—at this time a cavalry command, with Stuart, moved out and relieved me from my position. I then took position on the extreme right of Longstreet's line, which was then forming.

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1569 15th interrogatory. Were you south of the Warrenton, Gainesville and Centreville pike after this? If so, where did you go, what did you do, and by whose orders?—A. I was all the time south of it. I assumed it in the first place without orders, and remained there afterwards by General Stuart's orders.

16th interrogatory. Do you know of any artillery firing south of the pike in the direction of Manassas Junction or Bristoe Station, on the twenty-ninth of August, eighteen hundred and sixty-two? If so, where was it from, what was it directed to, what was its character and result?—A. The horse artillery, as I have stated, under Pelham, directed by Stuart, moved out and engaged the Federal forces. It was east of Hay Market and south of the turnpike. It was directed to a marching column or advancing column. It was so reported to me by my scouts. They also reported that the column had halted.

17th interrogatory. If you were south of the Gainesville pike did you see any Federal forces advancing from the direction of Manassas Junction or Bristoe? If so, do you know whether any measures or expedients were taken by General Stuart or yourself, or directed to be taken to retard, impede, or prevent such advance, or to divert such forces? If so, please state what they were.—A. Stuart reported the advance of a Federal force, and that led to the dragging of brush as previously related.

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1st cross-interrogatory. Please mark upon the map (hereunto attached) with a red letter A the various places where you know of your own knowledge your pickets were placed about daylight on the right of Jackson's forces, Aug. 29th, 1862.—A. to 1st cross-interrogatory. My pickets were posted along the line indicated by the letter A marked on the map, as requested, on the date given. [From Pageland lane on the pike to letter A in word Warrenton, then northeast to first brook.]

2d cross-interrogatory. If you cannot do so, designate the roads which you know of your own knowledge were guarded by your pickets at that time.—A. to 2d cross-interrogatory. My reply to the first question answers that.

3d cross-interrogatory. Mark with a red letter B the road leading off to Manassas Junction which you say you occupied at daylight a mile or two beyond the turnpike.—A. to 3d cross-interrogatory. My position was at the point which I have marked on the map with the letter B 1, and my pickets were extended out on the roads indicated by the other letters B, which I have marked, as requested. [B is on Meadowville lane, 1,400 feet north of Hampton Cole's; B, B, B are at the junction of Meadowville lane with old Warrenton and Alexandria road, on that road 2,200 feet east of junction, and 1,800 feet southeast of jun tion on railroad.]

4th cross-interrogatory. Mark with red letter C the point where General Stuart joined you with his staff about ten o'clock of 29th Aug., 1862.—A. to 4th cross-interrogatory. It was at the forks of the roads which I have marked on the map with the letter C. [Junction of Meadowville lane and old Warrenton and Alexandria road.]

5th cross-interrogatory. Mark with red letter D where the forces of General Longstreet were when you first saw them on that day.—A. to 5th cross-interrogatory. I have marked the points with the letters D, as near as I can on this map. [2,800 feet west of Pageland lane on the pike, then south half-way to railroad.]

6th cross-interrogatory. Mark with the letter E the position of the "few of the enemy who were in my (your) front," against whom you were posted to protect Longstreet's advancing forces, as I understand you to state.—A. to 6th cross-interrogatory. They run in front of my pickets at the points I have marked on the map with the letters E. [On the railroad 2,200 feet west of Dawkins' Branch, then into the woods to the southeast to the Manassas and Gainesville dirt road.]

7th cross-interrogatory. Mark with red line and letters F F at each end of the line the distance and road along which your command dragged brush.—A. to 7th cross-interrogatory. I have marked the map as requested. [From junction of Meadowville lane and old Warrenton road on the lane north 2,800 feet.]

8th cross-interrogatory. Did you, yourself, see this dragging of brush?—A. to 8th cross-interrogatory. I did.

9th cross-interrogatory. How many men were present for duty in your regiment on said 29th August?—A. to 9th cross-interrogatory. It was somewhere between three hundred and four hundred.

10th cross-interrogatory. How many were dragging brush?—A. to 10th cross-interrogatory. There was a large detail—several companies—in the neighborhood of a hundred.

11th cross-interrogatory. With a view to getting their opinions as to hour and place of dragging brush on 29th of August, 1862, please state if you remember
1570 the names and addresses of any officers or men now living who were eye-witnesses of such dragging.—A. to 11th cross-interrogatory. The regiment was

subsequently so badly cut up that I do not now remember the name of a single living officer who was present, unless it may be Hon. B. B. Douglas, now a member of Congress from Virginia.

12th cross-interrogatory. What time in the day did you begin dragging brush, and when did you end it? State particularly how you fix the time.—A. to 12th cross-interrogatory. We began it, as near as I can remember, about ten o'clock in the morning. It must have been in the neighborhood of one o'clock when we quit. I state the time from my recollection.

13th cross-interrogatory. Draw a red line from the point where you said you met General Stuart when he directed you to drag brush to a place marked New Market, another from the same first-named point to Manassas Station, a third line to a point where Milford road runs off at foot of map, and a fourth to Langley's Mills, and then state the position with reference to either of these lines of the Union forces to delude whom you dragged brush as Stuart reported them advancing.—A. to 13th cross-interrogatory. I have marked the lines on the map as requested. The forces I desired to delude were reported to be in the direction of Manassas, between the points I have previously marked on the map with the letters E and Manassas.

14th cross-interrogatory. Along what road did you understand the Union forces were moving upon our (your) right flank, because of which you were ordered to drag brush? Please mark the road with red letters G G and the position of the Union forces with red bars ≡≡≡≡.—A. to 14th cross-interrogatory. I only understood the Union forces were moving as stated. I did not see them, and cannot locate their position.

15th cross-interrogatory. In whose command was Major Pelham; in that of Longstreet or of Jackson?—A. to 15th cross-interrogatory. Major Pelham was chief of artillery with Stuart, under Jackson.

16th cross-interrogatory. Where were you when Pelham came to you? Mark with red letter H.—A. to 16th cross-interrogatory. I was near the point I have marked with the letter H; about at the point marked C [near junction of Meadowville lane and old Warrenton and Alexandria road].

17th cross-interrogatory. To what point and in what direction did Pelham "move out to the right" where he engaged the enemy? Mark point with red letter I and direction with red arrow and letter K. ⟶.—A. to 17th cross-interrogatory. I have marked the direction in which he went. I do not know to what point he went. [A little east of south, towards Union skirmishers.]

18th cross-interrogatory. How many guns had he with him?—A. to 18th cross-interrogatory. It is my impression he had only two.

19th cross-interrogatory. In which direction did he fire? Mark with red arrow and letter L.—A. to 19th cross-interrogatory. I did not see him fire. I heard artillery in the direction he took.

20th cross-interrogatory. Where were the enemy at whom he fired? Mark with red letter M.—A. to 20th cross-interrogatory. That I could not tell.

21st cross-interrogatory. What cavalry command relieved you then, and from where did they move out? Mark point with red letter M.—A. to 21st cross-interrogatory. It is my impression that I was relieved by General Bev. Robinson. They came in from the direction of Gainesville. I at once left upon being relieved.

22d cross-interrogatory. Where was your position on extreme right of Longstreet which was then forming, as you say? Mark this position with red bars and letter O.—A. to 22d cross-interrogatory. I have marked the map as requested. The point near Brewer's Spring. [One thousand three hundred feet east of junction Meadowville lane and old Warrenton and Alexandria road.]

23d cross-interrogatory. Do you know of your own observation that Jackson's infantry was engaged all the morning?—A. to 23d cross-interrogatory. I know there was more or less firing all morning. I did not consider it a regular engagement. There was no battle.

24th cross-interrogatory. Have you had your memory refreshed lately? If so, state when, where, and by whom, or what.—A. to 24th cross-interrogatory. I have not. I have not even read the proceedings of the present trial.

25th cross-interrogatory. Have you ever been over the ground you speak of since 1862? If so, state when, and if you have examined the topography particu-
1571 larly.—A. to 25th cross-interrogatory. I have not been on the field since that day. I had previously examined the topography of the country particularly, and made a map of the first battle of Manassas.

B. S. White, then major and assistant inspector-general of the *regular* Confederate army, serving on Maj. Gen. J. E. B. Stuart's staff, called by the government, testified as follows (Board's Record, p. 1052):

Q. Where were you on the morning of Friday, August 29, 1862?—A. Near Sudley Church.

Q. Do you know anything that transpired in your immediate vicinity on that morn-

ing? If so, what was it? [Map shown and explained to witness.]—A. On that morning we were looking south; there were some troops appeared on our left, Federal troops, and there was some little confusion in our ambulance train just north of Sudley Springs.

Q. What then transpired?—A. There were some artillery and troops put in position to open on the enemy in *that* direction (witness indicates that the artillery was west of Sudley Church), firing east across Bull Run.

Q. Do you know whose battery that was that was put in position?—A. Pelham's battery; he commanded the Stuart horse-artillery.

Q. What then transpired?—A. Major Patrick was ordered to charge, and did charge the enemy in that direction, and lost his life there.

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Q. That morning after Major Patrick had those orders to charge, what did you do?—A. The enemy were driven away.

Q. Then what was the next event that transpired?—A. We moved off across the country to find out what had become of Longstreet's corps; we moved off in this way, towards Thoroughfare Gap.

Q. Did you find General Longstreet's column or corps advancing?—A. We did, between Hay Market and Gainesville.

Q. What did General Stuart then do?—A. General Stuart then threw his command on Longstreet's right and moved down with his right flank in the direction of Bristoe to Manassas Junction.

Q. What did you then observe?—A. We took the road leading directly down the Manassas Gap Railroad; there is a road running parallel with it.

Q. How far down did you go?—A. General Stuart threw his command on the right of Longstreet, and passed down the Manassas Gap Railroad to about that point [west of Hampton Cole's; point marked "W."].

Q. Then what did you do?—A. We discovered a column in our front—discovered a force in our front coming from the direction of Manassas Junction to Bristoe.

Q. What sort of a point was that where you discovered this column coming, so far as observation is concerned?—A. It was a good point for observation; a high position, elevated ground. We could see Thoroughfare Gap and Gainesville and all the surrounding country.

Mr. MALTBY. Do you refer to the point where he was?

The RECORDER. Yes; where they saw this column approaching.

Q. How near the point on the railroad was it that this commanding ridge is?—A. Not very far from the railroad; I suppose a half or three-quarters of a mile—something like that.

Q. Could you indicate about where you think it was?—A. I think it was about *there*. [Marked thus: +.]

Q. You saw the column of troops advancing?—A. Yes.

Q. Did you at that time judge about how much of a column it was?—A. I did not see it all, but it seemed to be a very large body of troops.

Q. What did General Stuart then do?—A. He put a battery in position on that hill.

Q. Did you receive any instructions at that time?—A. I did.

Q. What were they?—A. My instructions were to put a battery in position there and open on the column advancing in this direction. His instructions to me were to go to General Jackson and report the fact of this column moving in that direction.

Q. Did you go and do it?—A. I did; I went across *here*. [Parallel with Page-
1572 land lane.] General Jackson's corps was here—that is, his command was along the Independent Manassas Gap Railroad, and the batteries were posted right on a range of hills in the rear of that. I found General Jackson on a range of hills just in the rear of his battery.

Q. Having reported, what did you then do?—A. I then started to return to General Stuart.

Q. Where did you go?—A. I tried to take a little short cut going back to him. I made a little detour; I passed where there had been a skirmish the evening before.

Q. Did you find any dead and wounded there?—A. I did.

Q. North of the pike or south of the pike?—A. On the north side.

Q. Did you find General Stuart at once?—A. It was some time before I found him; a half or three-quarters of an hour.

Q. Did you halt on the way going back?—A. I passed a little time with General Jackson after I reported to him, because the batteries were engaged; his batteries were on Stony Ridge. (Witness indicates a point back of the words "Stony Ridge.") His line of battle was along the Independent line of the Manassas Gap Railroad; there was a battery that came out about the point of that woods (just northwest of the Matthews house and west of the Sudley pike); just about that point there was a battery from the Union side that came out there and took position, and I staid there some time watching the artillery duel between the guns stationed *here* and that battery. Then going back to General Stuart I took a little short cut and passed over some ground where there had been a fight the evening before, and there was some

dead on the field. In going back I met a cousin of mine, who commanded a battalion connected with Ewell's corps, which was engaged in this fight; he was reconnoitering; I went along with him, and saw what was in my front; I suppose it was half or three-quarters of an hour, or maybe an hour, before I got back to General Stuart.

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Q. When you got back to General Stuart, where was he?—A. Where I left him, on that hill.

Q. At that time where was General Longstreet's command?—A. They had come down and were forming *here*. [Witness indicates a point back, westerly of Pageland lane.]

Q. About what time of day was it that this affair occurred at Sudley Springs; before you and General Stuart started to cross the country towards Thoroughfare Gap?—A. Early in the morning.

Q. At what would you fix the time?—A. I suppose eight or nine o'clock in the morning.

Q. Did you remain at this point with General Stuart after you got back on this hill?—A. I did.

Q. What became of this column of troops that you saw advancing?—A. I don't know what became of them; they disappeared from our front.

Q. Do you know of any other position being taken up by General Longstreet's command during the day in advance of the position that you have indicated? If so, when and where? You indicated a position back of Pageland lane.—A. I do not.

Q. How long were you down in the neighborhood of this hill which you have marked with a cross during that day; up to what time?—A. We were down there the greater part of the day; we were on the extreme right all the time afterward. The cavalry remained on the extreme right until the morning of the 30th.

Q. Do you know of any other measures taken to retard the advance of this column of troops from the direction of Manassas Junction or Bristoe that day by General Stuart, other than the planting of the battery in that position?—A. I do not. Before that battery was put in position of Robertson's brigade of cavalry and Rosser were engaging the enemy in our front. When the battery was put in position and opened on the enemy it checked them, and they retired. Then General Stuart told me to go to General Jackson and report the fact that this column was advancing in this direction.

Q. During that day what sort of an action was going on, on the 29th, to your knowledge?—A. There was very heavy fighting going on up here in Jackson's front.

Mr. MALTBY. Did you see it?—A. I heard the musketry firing and I heard artillery.

1573 Q. This engagement which you speak of between Robertson's cavalry and the enemy—what was it?—A. It was a skirmish simply.

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Q. What time do you think you met General Longstreet between Haymarket and Gainesville?—A. It was about eleven o'clock.

Q. Was General Longstreet at the head of his column?—A. He was near the head of the column.

Q. Were there many troops in front of his command?—A. Not many.

Q. Were they advancing?—A. They were.

Q. Rapidly?—A. They were marching at an ordinary pace.

Q. State the style of march; how many front?—A. They were marching in column.

Q. How many front?—A. Marching in column of regiments, perhaps four abreast.

Q. Were they in close order?—A. Yes, sir.

Q. Would you swear it was eleven o'clock?—A. It was about eleven o'clock.

Q. You are confident that none of Longstreet's forces had passed through Gainesville before eleven o'clock?—A. I don't think they had.

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Q. Those hours are stated purely from memory?—A. From memory simply.

Q. How did General Stuart throw his cavalry to the right of Longstreet's column?—A. By passing through Longstreet's line of march.

Q. Were they passed through in column?—A. No, sir.

Q. How?—A. By single file.

Q. What became of the cavalry then?—A. They took the road leading parallel with the Manassas Gap Railroad, and moved down in the direction of Manassas Junction.

Q. Did you remain with the cavalry or did you go with General Stuart?—A. I was with General Stuart.

Q. Did General Stuart have any conversation with General Longstreet or General Lee?—A. He did.

Q. About where was that?—A. At the point where we met Longstreet's column.

Q. Was that while you were on the march, or was it while you were personally stationary?—A. We were stationary at the time, of course, when we met Longstreet's column; they were together when this conversation took place. General Lee passed

his command on the road, and Longstreet then moved down with Stuart, and they then and there moved down in the direction of Manassas Junction.

Q. How long a conversation did General Stuart have with General Lee or General Longstreet?—A. Ten or fifteen minutes.

Q. Did you converse at all with the men?—A. No, sir.

Q. Any of the command?—A. No, sir.

Q. How long was it before you arrived at the point marked "W" by you on this map?—A. It could not have been over three-quarters of an hour or an hour.

Q. Then about what time would that make it when you arrived at the point marked "W"?—A. Between 11 and 12 o'clock.

Q. Nearer which?—A. Nearer 12 than 11.

Q. Where were Rosser's cavalry at that time, if you know personally?—A. I judge they were right in *here*. (Witness indicates a point about southwest of Hampton Cole's.)

1574 Q. Were they all there, do you know?—A. Yes; they were there.

Q. All?—A. All.

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Q. You say that the distance from the railroad, or from the point "W" to where those two cannon or that battery were posted by General Stuart, was from half to three-quarters of a mile; this map being on a scale of three inches to a mile, you have marked it within half an inch, which would be far less than either of those distances; how do you come to put it there—that cross-mark?—A. That is about the distance they were; about three-quarters of a mile from this ridge.

Q. That not being three-quarters of a mile, where would you put their position?—A. *There* is about where the battery was. (The witness measures the map and marks the point indicated thus: $\times^2$).

Q. How did the forces of the enemy coming from the direction of Manassas or Bristoe appear; how were they formed; in column, or line of battle, or how?—A. They were in column.

Q. How far off?—A. They were about *here*. (Witness indicates a point on a line with "SS" in the word "Manassas" on the Manassas Gap Railroad.)

Q. On the railroad?—A. Coming up this road running parallel to the railroad.

Q. From the position where you were, did you see any house in the direction of those troops?—A. Of course we could see the whole surrounding country.

Q. Did you see any house in the direction of those troops between you and those troops, or nearly between you and those troops?—A. There were several houses; yes.

Q. Were those troops near any house that you could see?—A. They were near the Carraco house.

Q. Very near?—A. Perhaps a little beyond.

Q. Did not you see any troops in the direction of the place marked "Lewis-Leachman house" on that day?—A. Yes; there were troops there, too.

Q. How were they disposed?—A. I could not say.

Q. Are you certain that no shots were fired from that direction at the men about in the neighborhood of the Lewis-Leachman house? [The position indicated being $\times^2$].—A. No, I am not certain; though I believe that there were.

Q. Are you not certain that most of the shots were fired in that direction?—A. I am unable to answer that, for this reason: at the time that battery was put in there [$\times^2$], firing in this direction upon the Manassas Gap Railroad, General Stuart requested that I should go here and report the fact to General Jackson, which I did; I went off *there*, and was gone at least three-quarters of an hour or an hour. [Witness indicates a direction towards the Independent line of the Manassas Gap Railroad.] The firing commenced in the direction of the Manassas Gap Railroad.

Q. How many shots?—A. I do not know.

Q. Much firing?—A. Yes; a good deal.

Q. Fifty shots?—A. I could not say whether there were one or fifty, because when the firing commenced, as I tell you, and that battery came in position, firing in this direction—I know there were troops off here [towards the Lewis-Leachman house]—some shots may have been directed there in that direction [the Leachman house], and I went away to report to General Jackson.

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Q. Are you positive that there were two shots?—A. Yes; I am positive that there were two shots.

Q. Three?—A. Yes, there were three.

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Q. Was there not firing due south from $\times^2$, in the direction of Langley's Mill?—A. That I cannot answer. The object of putting that battery in that position

1575 was, we saw troops coming from this direction, and it was put there for the purpose of firing in that direction [Manassas Gap road].

Q. Have you been informed during the last month of the position of the column of troops commanded by General Porter, with reference to this map, on the morning of

the 29th?—A. I have not; I do not know whether this was General Porter's column, or whose column it was.

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Q. How did they appear to you; to be on top of a hill, or in a depression, or in woods, or by woods, or in an open field?—A. The position we occupied was a commanding one, of course. They were in a depressed situation from the position we occupied. We were on this hill and they were *here*. [Witness indicates.]

Q. In column, marching along the Manassas Gap Railroad?—A. Yes.

Q. Did you see the Manassas Gap Railroad right in their vicinity?—A. The road they were marching on was parallel to the Manassas Gap Railroad.

Q. When you came back to that position did you see any Federal troops anywhere?—A. Yes. There were Federal troops off here. [Indicating the lines of the regiments.]

Q. When you came back did you see Longstreet's command?—A. I saw Longstreet's command on my way back from General Stuart; they came and formed in here. [Pageland lane.]

Q. Did you remain in that position all day?—A. We were there most all day. Do you mean me individually?

Q. Yes.—A. No. I was backward and forward several times during the day. I went with messages from Stuart to Lee and Longstreet and to Jackson.

Q. Then, during that whole day, you were in the vicinity of Longstreet's troops and knew of their position?—A. Yes; we were on his right.

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Q. You say you were on a hill that commanded views of the country in front of you?—A. We had a battery off here [W. 5]; that is, there was a park of artillery in position and Longstreet's command was about that way [south].

Q. Were there any artillery in front of the position called "W. 5"?—A. Right there we had 19 or 20 pieces of artillery.

Q. Where "W. 5" is?—A. Yes; between Jackson's line and Longstreet's line.

Q. Are you as positive about the position of the guns marked "W. 5" as you are about the position of Hood "W. 3"?—A. Right here was where Hood was [witness indicates]; beyond the piece of woods there was a little branch running down; over on a hill was a battery of the Union troops.

By the RECORDER:

Q. Do you know what these red lines stand for?—A. No, sir; I do not.

Q. These red lines are contour lines marking the heights, and these numbers, 200 and 210, and so forth, mark the elevations.—A. Hood was here [W. 3]; then there was a small branch.

Q. Do you know the marks which indicate branches?—A. No, sir.

Mr. MALTBY. They are the black marks.

A. Well, that is the branch [Young's Branch]. My recollection is there was a battery or several batteries of the Federal forces right there.

Q. At Britt's?—A. Wait a moment; it may be that piece of woods [between Britt's and Cumliffe's]. There is where they were—in there [about south of the word "Meadowville," under Cunliffe's]. There was a hill—I don't know how you mark it here—there was a hill, a very nice position for artillery, where there were several batteries that were firing off here [at W. 5] in that direction; with Longstreet's command right in here [W. 3].

Q. Did Longstreet's line curve from the position of the artillery [W. 5]?—A. I cannot answer that question. I had no connection with Longstreet's command; it was only observations in passing with messages from Stuart to Lee or Jackson.

Q. Where was Lee's position, headquarters, where he could be heard from, in 1576 reference to Longstreet's line, in front or behind it?—A. It was behind it.

Q. Can you locate on the map where General Lee's headquarters were? Describe as near as possible what his headquarters were. Were they a house?—A. No; the times I reported to him he was in the field; he would move sometimes to one position, sometimes to another.

Q. How far behind Longstreet's front line was General Lee?—A. I found General Lee at one time just on a hill, just behind General Hood, when I went with a message to him, just behind General Hood's command; he was there with a glass looking off in the direction where this battery was. [Southeasterly towards Britt's.]

Q. Do you know Col. Charles Marshall, of General Lee's staff?—A. I do.

Q. Did you see him during the day?—A. I did; several times.

Q. Was he in a stationary position, dismounted, or riding about?—A. Riding about. Whenever I saw him he was mounted. I saw him several times during the day, at different parts of the field.

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Q. If his actual headquarters were about in the position marked P, would the position of Hood be in the position you have assigned it or in advance of the letter P,

that being on the edge of a hill, as you see by the map, Cunliffe's being in a depression—where would you put the line of General Hood?—A. General Hood's line was just here. [Witness indicates.]

Q. Suppose Lee's headquarters were where the letter P is, where would the line of General Hood be on this map?—A. I never said that General Lee's headquarters were there [at the point marked P].

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Q. What time do you put it that you came back from General Jackson after being sent over by General Stuart?—A. Half past two or three o'clock.

Q. Do you know of any action that occurred along the Warrenton pike—infantry?—A. I heard firing.

Q. What time was that?—A. In the evening.

Q. About what time?—A. General Jackson's command was engaged all the time

Q. Was Hood's command engaged at all?—A. That evening they were.

Q. What time that evening?—A. I suppose about three o'clock in the evening they were engaged; two and a half to three o'clock.

Q. Were they engaged vigorously?—A. Quite a severe fight.

Q. Describe the action, so far as you observed it.—A. I was not present. I didn't see it. I heard the firing; it lasted, I suppose, half to three-quarters of an hour.

Q. Was it very vigorous?—A. It was a very sharp fight.

Q. Was that the only occasion in which Hood's command was engaged that day, to your knowledge?—A. To my knowledge that is the only one until next morning.

Q. You say it was three o'clock?—A. Between two and three o'clock. It may have been after three. It was after he had got in position.

Q. How long after he got in position?—A. He got in position, I suppose, about twelve or one o'clock. This engagement took place about two and a half, or maybe three, or three and a half.

Q. Was it as late as five?—A. I can't recollect. I don't think it was.

Q. What is your recollection about the time that that engagement took place upon the Warrenton turnpike by Hood's troops?—A. I was away on the right. Of course there was fighting on the line. I don't know what troops were engaged, but I know that Hood's troops had a fight there that evening. I don't know whether it was three or three and a half; it may have been five o'clock. I know they had a sharp fight there, and I heard it.

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Q. Do you fix that time with more or less precision; and, if so, why, than the
1577 time you arrived at the point marked +[2]?—A. Hood's command had not formed at the time we left here; he formed afterwards.

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Q. Does your memory serve you equally well as to all the hours stated by you?—A. The hours that I spoke of at the time I was connected with our command, of course, are more clear in my mind.

Q. Than the time when you heard the sound of vigorous battle near you?—A. The cavalry were around on the right. Hood was right in there [W[3]]; and three and a half or three o'clock, to the best of my recollection, is the time I heard this sharp fighting in Hood's front. From the position he occupied I supposed it was his front, because we were just to his right.

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Q. If it were proven that no Union troops were upon the Manassas Gap Railroad in the position you have marked, and that the position which they actually did occupy—the corps referred to in that neighborhood—was invisible from the position that you occupied—— —A. I never said it was a corps; I said it was a column of troops.

Q. The corps referred in that neighborhood, would you or would you not say that those troops were in the neighborhood of Leachman's?—A. I saw troops in both directions.

Q. Might they not have been on the Alexandria and Washington road, about the junction of Lewis' lane No. 1 with that road?—A. No, sir; there were troops off there; we could not see them from the position we occupied. There were troops over here both in the direction of the Lewis-Leachman house and off in the direction of the Manassas Gap Railroad.

Q. How much of the column did you see there on the Manassas Gap Railroad?—A I saw a good many troops there. I don't know how many they were.

Q. A regiment?—A. I suppose there were more; two.

Q. Two regiments?—A. Yes; perhaps more than two regiments.

Q. How much of the line did you see?—A. I saw the column; they were moving in column.

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Q. How many regiments should you judge you saw?—A. I don't know how many regiments. When the head of that column appeared there, this battery was put in

position and opened on them. I went by direction of Stuart to Jackson to report to him.

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By the RECORDER:

Q. Assuming Hood's division to be in the place you have indicated by W^3, and suppose there had been a battery placed on this rise of ground marked C, would that have fulfilled what you understood was the position of a battery firing off in the direction of "W^5"?—A. Yes. Just beyond a small branch there was a hill, a very fine position for artillery, and it was firing off in the direction of "W^5." The highest ground of that hill is where that battery was placed, or rather a park of artillery; 19 or 20 of our guns were in that position.

Q. Suppose that the column of troops that you saw on that morning, or on the noon of Friday, August 29, had been coming up the dirt road from Manassas Junction to Gainesville and was in the neighborhood of Dawkins' Run, would that have been the position of the column that you saw according to the map?

(Objected to as leading.)

A. The troops that we saw approaching came more from the direction of Bristoe than from Manassas.

Q. Therefore, what road indicated on this map best fulfills the direction from which you saw those troops coming?

(Objected to as leading.)

A. They were approaching more in the direction from Bristoe than from Manassas.

Q. Therefore what road best of the roads you see on this map shows the direction from which you saw those troops coming [map explained to the witness]? Now, where were the Federal troops?—A. I remarked a while ago that the column that was advancing advanced more from the direction of Bristoe than Manassas.

Q. *Here* is Bristoe and *there* is Manassas. Now where do you put it, what direction? Make a line indicating the direction.—A. They must have come in *here* or in *here*.

1578 Q. Then you are not positive that you saw them on the Manassas Gap Railroad?—A. I never said I saw the Manassas Gap Railroad. I said I saw them on the road running parallel with the Manassas Gap Railroad. They were not marching on the railroad. They were marching on a road that I supposed, from the position I occupied, was a line parallel with the Manassas Gap Railroad; they may have been on this road [from Gainesville to Stuart's Hill] and took position there [at + ²]. From that position we saw the column coming up, but they were not on the railroad.

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Q. Did you see the railroad in conjunction with seeing them, or at the same time in connection with seeing them?—A. I could not say. I was not looking for railroads. I was looking for troops. I don't recollect now whether I saw the railroad or not, because my attention was directed to more important matters.

Q. Would you swear that those troops, Bristoe being *here* and Manassas *there*—that those troops were not on this road to Milford?—A. No; they were not in that direction at all. They were off here [witness indicates in the direction of the Manassas and Gainesville dirt road].

Q. Had you been to Bristoe that day?—A. No, sir; we had been there the day before.

Q. How do you know where Bristoe was?—A. Because I have been there a thousand times since.

Q. Could you see it from that position?—A. I don't know that you could see the station, but I knew the general direction, and had been all over that country time and again.

Q. Did you see any of the shot fired fall near that column?—A. Yes, sir.

Q. What did the column do?—A. The column seemed to retire.

Q. Did you see them retire?—A. Yes; I saw them give back.

Q. How did they retire?—A. You know how troops retire. They gave back into a piece of woods; and just at that time I went off with a message, as I stated before—went off with a message to General Jackson from General Stuart.

Q. Did anybody mention a piece of woods to you in connection with those troops within the last month?—A. Not if my memory serves me.

Q. Were you reminded of a piece of woods by any marks on the map?—A. No, sir; because my memory serves me clearly that it was just in a piece of woods when the head of the column showed itself, and they retired back into the woods, and we fired our artillery into this piece of woods.

Q. Did you see a smaller column march from this main column in advance and deploy?—A. I don't recollect. When we took position there was a column advancing more in the direction of Bristoe than from Manassas.

Q. Looking at the map where you made a mark somewhat south and east of Carraco's on the Manassas Gap Railroad, if that country was all open at that time, would that position fulfill the position you have just indicated as where those troops were

that you saw that fell immediately back into the woods upon being fired upon?—A. My recollection is that the scale of this map is about the distance they showed themselves in our front. I suppose that would indicate about three-quarters of a mile, or something in that neighborhood—half or three-quarters of a mile. That is about the distance that they were in our front when we discovered them and opened upon them. At the same time we saw troops off in this direction [the Lewis-Leachman house]; just about here there was a narrow range of wooded hills.

By Mr. MALTBY:

Q. You say that the artillery were stationed on the right of Jackson at the highest point on the ridge. Now, did Longstreet's line bend back from the line of Jackson, or did they make an angle more nearly approaching right angles?—A. I had nothing to do with Longstreet's position.

Q. But you saw it?—A. I passed in his rear several times.

Q. Take a pencil and mark Longstreet's line.—A. There was an angle formed between Jackson and Longstreet's line; Jackson's line ran along here. [Witness indicates.]

Q. Draw it in pencil. There is the Independent line of the Manassas Gap Rail-
1579 road. [Indicated to the witness.]—A. Jackson's artillery was posted on this stony ridge.

Q. Draw a line where the nineteen or twenty guns were posted.—A. I had no connection with Longstreet's command or Jackson's. I passed in the rear of both lines several times with messages. I did not inspect their lines. I just speak from general recollection of their lines.

Q. Then you do not recollect precisely where any one line was?—A. I do; yes. I have indicated there is Jackson's line; his artillery was posted on this range of hills; General Longstreet formed here. [Witness indicates the different positions.] Their lines did not join; there was an angle there, an opening, and there is where the battery of artillery was.

Q. Draw Jackson's line and the cannon of Longstreet.—A. I have indicated it. [Witness indicates the line of the Independent line of the Manassas Gap Railroad.] His line did not go down that far [indicating Sudley Church]; it went to about there.

Q. Where do you run Jackson's line?—A. Jackson's line ran about in this direction. [Marked with a pencil.] That is about the direction of Jackson's line.

The line indicated by the witness by means of a pencil is followed in ink by the Recorder.

Q. Where were these eighteen or twenty guns of Jackson's?—A. That did not have reference to Jackson's command; Jackson's artillery was posted on this range of hills back of his line of battle. This park of artillery is where W^5 is and W^6.

Q. You still say that Hood occupied that position, and that his right was where + and ++ are?—A. There is where Hood was; right there.

By Mr. MALTBY:

Q. Did you see General Longstreet's troops or General Hood's troops while they were forming in line of battle on the 29th, and after they were formed?—A. I saw Hood's command after they had taken position.

Q. But not while they were forming?—A. Not while they were forming.

By the RECORDER:

Q. Did you see them before they were formed? If so, at what time?—A. When we parted with them on the pike between Haymarket and Gainesville, we took the right and moved down to this position where we saw the column advancing. When that battery took position there and opened in that direction I went with a message immediately to General Jackson, and passed over the ground where I saw Hood's command. Afterwards, when I went on a message from Stuart to Lee, I found him on that hill in the rear of Hood's line and delivered my message to General Lee, looking to the south of the Warrenton pike on that hill.

Q. He was not in that position when you went to General Jackson with that message?—A. No, sir; he had not taken position there then.

Rev. *John Landstreet*, called by the Recorder, and examined in the city of Baltimore October 22, 1878 (present, the Recorder and Mr. Maltby, of counsel for the petitioner), being duly sworn, testified as follows (Board's Record, p. 1067):

Question. State your residence and occupation.—Answer. Minister of the gospel in the Southern Methodist Church; I reside at Reisterstown, Baltimore County, Maryland.

Q. What position did you hold in the Confederate Army of Northern Virginia on

the 29th of August, 1862?—A. I was chaplain of the First Virginia Cavalry during the entire war. Before I was commissioned I was with General Stuart. I received my commission while with him. I had a little more liberty than some of the others had, in view of my position, preaching to the different commands, and would often absent myself with less formality than some of the rest would. I was with him in all his important engagements, or, if I was not with him, he would generally send for me if he knew where I was.

Q. Where were you on the morning of August 29, 1862?—A. I was between Sudley Springs and Aldie, about midway in the mountain.

Q. Did you join General Stuart that day?—A. I joined him for the first time for eight months, after our Catlett's Station raid. I think I reached Sudley between eight and nine o'clock in the morning.

Q. Was General Stuart there?—A. Yes, sir.

Q. Do you recollect any circumstance transpiring after you arrived there?—
1580 A. No, sir. Just before we arrived there was a little confusion or kind of stampede among the baggage-train. I don't know that I noticed any of our cavalry there unless it was those connected with the commissary and quartermaster's department. But there was a little skirmish there about that time which attracted my attention.

Q. Did you see Captain Pelham any time that day?—A. Yes; I saw him. I was very intimate with him. But where I saw him I cannot tell. I have a journal in which I noted everything. I kept it at the request of General Stuart and partly for my own gratification, but especially at his request.

Q. Do you know at what time you left Sudley?—A. No, sir; I recollect that the next place where I was was called Cole's. It was an elevated position, rather in the angle between Gainesville and Bristoe; Bristoe being much farther off. [Witness looks at the map.] It was Hampton Cole's.

Q. At what time in the day were you at Hampton Cole's?—A. I did not have a watch, but I think it was somewhere towards ten o'clock in the day.

Q. What did you do or see there which has impressed itself upon your attention?—A. There was considerable dust in this direction [witness indicates], indicating a body of troops; there was considerable down in this direction somewhere. At any rate, General Stuart ordered some of the Fifth Cavalry to go and cut brush and drag it along the road.

Q. [By Mr. MALTBY]. Did you hear the order?—A. Yes; to drag the brush along the Gainesville road, so as to serve as a feint and to convey the impression that there was a force coming down the Gainesville road. It was given, I distinctly recollect, to a member of the Fifth Virginia Cavalry.

Q. Who was the colonel of that regiment?—A. T. L. Rosser. We frequently after that conversed about it.

Q. What was done after that, while you were in the neighborhood of Hampton Cole's?—A. There was some firing from this position [+2], in the direction of this approaching force; and from my recollection of it the force was a considerable distance down. If 3 inches indicate a mile here, and if it was a life and death case, I would say that it was inside of a mile that they were off.

Q. You should say it was a distance of about a mile?—A. I should say it was inside of a mile. It was not beyond a mile, certainly. [Witness indicates from Hampton Cole's.] There were several shots fired from this point in the direction down there.

Q. In what direction?—A. That depends entirely upon where the man was standing at the time, and what he was looking at. I did not charge my mind much with this Manassas Gap Railroad, though I knew it very well. But I would not say whether it was here or there [whether right or left]. It was pretty much in line with this railroad [Manassas Gap Railroad].

Q. What became of this column of troops upon those shots being fired?—A. I did not see them.

Q. They disappeared from your sight?—A. Yes, sir.

Q. Did they remain in the position they were in when they were fired upon?—A. No, sir. When my attention was directed to them they were where I could see the column, or a considerable portion of it; and they were marching in good order, close column.

Q. Do you recollect how many shots were fired at them?—A. I do not; but I am positive I didn't hear half a dozen; I know I did not.

Q. How long did you remain in that position in the neighborhood of Hampton Cole's that day?—A. I was sent off after that to hunt up the First Virginia Cavalry, not very far from there at that time; and I paid very little attention, indeed, from that time. When Longstreet came and formed there, General Jackson being in position, I came out from the command, and I was not in any of the fight at all except in the cavalry movements—skirmishing.

Q. Where did General Longstreet form his command?—A. It seems to me I struck a portion of Hood's command on General Longstreet's left before I got anywhere in

the direction of Longstreet's right. They seemed to come in a good ways in the direction of General Longstreet's left, if they were not immediately on his flank.

Q. About where would you put them; north of the pike, across the pike, or south of the pike?—A. Which?

1581 Q. Hood's division of that command.—A. From my recollection, there was a portion of Longstreet's command that crossed the Manassas Gap Railroad [the witness marks a point with a pen]; crossed it, I am sure, some distance, but how far I don't know. I do not think it was far. It extended, I think, up in this way. Hood's was in front of it; part of it in the body of the woods. My impression is that Hood came in a little in advance of Longstreet's left. I am certain I came to Hood before I came to Longstreet's force in position [marked "Longstreet" and "Hood"].

Q. What time of day was that that they were all in position? * * * —A. It is my recollection that it was somewhere between two and three o'clock.

Q. Do you know whether or not either Hood or the remainder of Longstreet's command were in advance to the east of Pageland lane at any time that day?—A. I do not.

Q. Was your position such that you could see the location of Hood and Longstreet during the afternoon?—A. O, yes; I could go where I pleased.

Q. How long did this action of that day continue?—A. The firing to my recollection continued up to about dark. It was near dusk. At times it was heavier than at others; and at times severer than I ever heard it in any engagement.

Q. What were your opportunities during that day of knowing the fact, provided General Hood had advanced east of Pageland lane? [Points of compass upon the map explained to the witness.]—A. My answer is, that if I had a desire to know it, I could have known it very easily; but I didn't think about it at all. It was not in my mind. I was well acquainted with Hood and his command, and that made the impression upon me in coming to this point. I came from the direction where Jackson's command was, and passed this heavy battery at the time, though I think there were a few more guns there than I have heard stated to-day.

Q. How late in the day do you recollect seeing General Hood's division?—A. Between three and four o'clock.

Q. Where was it then?—A. Where I have indicated on the map.

Q. Relative to the command that you heard given by General Stuart to the member of the Fifth Virginia Cavalry to drag brush, what do you know about whether that order was obeyed or not?—A. After hearing this order given, and being very much interested in the approach of this column below there, I kept a lookout, and it was not long—I am sure not more than 40 or 50 minutes—before the column of dust on the Gainesville road appeared.

Q. You saw the column of dust arising?—A. I saw a cloud of dust.

Q. Arising from this dragging of brush?—A. Yes.

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Q. Who arrived first at Hampton Cole's, you or General Stuart?—A. He did; he was there when I got there.

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Q. Will you describe the position on that map about where you saw the column of dust arising after General Stuart gave the order?—A. I think it was midway between this point and that.

Q. About midway between Hampton Cole's and Gainesville, along on the line of the Manassas Gap Railroad?—A. Yes. It may have been farther. There is some woodland beyond that.

Q. Were you on this commanding ridge where the guns were stationed, of which you have spoken?—A. Yes; right there at Hampton Cole's.

Q. Are you certain it was at Hampton Cole's, and not at Carraco's?—A. I am certain it was at Hampton Cole's.

Q. Did you arrive at Hampton Cole's before this battery was stationed upon this ridge?—A. Yes; the battery was put in position after I got there. This column from this direction made its appearance after I got there.

Q. What battery was placed there?—A. I don't know.

Q. Were they guns belonging to Stuart's command?—A. I think they were; I am not certain of that.

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Q. From your station at Hampton Cole's, in which direction was Longstreet's
1582 command when you first saw it, without reference to the map?—A. I am sorry you brought me a map with anything on it now, because my impression is that Longstreet's line commenced on the other side of the Gainesville road and crossed it, but did not cross it far, and came up and passed the Warrenton turnpike; and that Hood's command was extended beyond his left.

Q. Didn't you understand Hood's command to have been a part of Longstreet's command?—A. I mean Hood's division.

Q. In what direction, as you stood at Hampton Cole's facing the enemy, was Long-

street's command from you, with reference to your own person—to the left, right, front, or rear?—A. Looking down in the direction from which the enemy were coming, a portion of it was in my rear and a portion of it was not.

Q. At the time you arrived there at Hampton Cole's?—A. No, sir. They did not get in this position at the time I arrived at Hampton Cole's. I arrived at Hampton Cole's about ten or eleven in the morning.

Q. Where were the guns stationed in reference to Hampton Cole's?—A. The guns were pointed down a little to the left of the railroad.

Q. How near were you to the guns?—A. Right up by them.

Q. How much of that column did you see?—A. I could not say how many regiments there were. The column indicated that it was the head of a considerable body of men.

Q. What was that indication?—A. They were marching in close column.

Q. Would not a regiment march in close column?—A. Might not in as close column as that, and in good order. My judgment in the matter was that it was the advance of a large army.

Q. Did you see a quarter of a mile of that column?—A. No, sir.

Q. An eighth of a mile?—A. That is somewhere near it.

Q. Was it marching upon a plain?—A. I cannot tell you that. It did not appear to me as if they were coming up a hill, nor as if they were coming down a hill.

Q. As if they were marching upon a plain?—A. It looked pretty much as if they were on a level.

Q. Can you state whether any bushes were to their right or left, or trees?—A. No, I could not. My impression is that the country was pretty well open left and right of where I first saw them.

Q. Did you see them in flank at all?—A. No, sir.

Q. I don't know whether it is a military expression or not.—A. Do you mean did I see the rear of the enemy?

Q. No, sir; I mean the side of the column as it advanced.—A. No, sir; it was the shortest space of time before the firing commenced here at Hampton Cole's before I saw them no more.

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Q. Was this column to your right or left?—A. From the position I was in, it was almost directly in my front. I think if I had advanced in a straight line, I would have come up face to face with them. I was a little to the right of Hampton Cole's and looking right straight down.

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Q. Did you see troops in the neighborhood of the Leachman house?—A. I knew there were troops there, but how I knew it I am not now prepared to say.

Q. How did they disappear? Did they march out of sight in the rear, or did they retire in the bushes?—A. If you will let me use an illustration: It was a very common thing for a column of cavalry to advance, and one shot into a column of cavalry would make them disappear in the woods, and that was the end of it. I never saw a column that got out of sight quicker than this column did.

Q. How do you fix it as being eleven o'clock in the day?—A. During the war, when I did not carry my watch, I was accustomed to average the time—how long it took to go to this place, and how long it took to go to that place, and I often came very close to it.

Q. Did you average the time in this instance?—A. I speak now simply from my recollection of what my impression was at the time, when the time was that these things occurred. I have no doubt in the world that my impression was taken exactly from my diary as I wrote it; the times of the day were specified in that, where I stated the times of the day.

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1583 Q. You say you arrived at Cole's about ten o'clock?—A. I should say between ten and eleven. I think it was nearer eleven than half-past ten.

Q. You cannot swear positively whether it was half-past ten or eleven?—A. No, sir; only that it was in the forenoon; before twelve o'clock.

Q. From your position at Hampton Cole's, after the formation of Longstreet's line, could you see them?—A. Could I see who?

Q. Could you see Longstreet's line?—A. I was not there when Longstreet's line was formed. I visited the line after it was formed.

Q. How long did you remain at Hampton Cole's?—A. I suppose I staid there until—well, it was just after the brush expedition; shortly after that; and I went in the direction of Gainesville from there. I don't know but what I went right across to Gainesville; I think I did.

Q. How did you go?—A. I struck out on this Gainesville road that I had traveled hundreds of times towards Gainesville; pretty much along the line of the railroad.

Q. How long did you say that it was that you were at Hampton Cole's?—A. I said was there until after twelve o'clock.

Q. Were you there about an hour in all?—A. I was there more than an hour; I was there fully an hour and a half.

Q. You passed along the Manassas Gap Railroad?—A. I passed along the Gainesville turnpike.

Q. What did you see on your route in the shape of troops?—A. I met some of, I think, Longstreet's forces on the Warrenton pike.

Q. Did you see any of Longstreet's troops?—A. I have no recollection of seeing them.

Q. Were there any troops marching on that turnpike?—A. There may have been. I did not pay any attention to it.

Q. How long did you stay away in the direction of Gainesville?—A. I staid away until about three or half-past three o'clock, I think.

Q. Then what did you do?—A. Then I returned to the First Regiment of Virginia Cavalry.

Q. Where was that?—Q. If my recollection serves, it was between Hampton Cole's and Sudley.

Q. Was that the detachment that had been sent off to drag brush there that day?—A. No, sir. That was the Fifth Virginia Cavalry, commanded by Colonel Rosser.

Q. When did you first see the place where Longstreet's line was formed after you went off towards Gainesville?—A. I saw it for the first time a little after three o'clock.

Q. Was it then formed?—A. Yes; it was then formed in good order.

Q. All along the whole line?—A. Well, I did not ride along the whole line.

Q. Where were you?—A. I could not tell you how it was along the whole line. I rode in along *here* and I passed on out *here*. I passed around on Longstreet's left, and I found Hood's division in front of Longstreet, and rather extending beyond his left. [Witness indicates near Pageland lane.]

Q. Then what did you strike?—A. I didn't know what the name of the road was. I made for Sudley neighborhood, and there I met a portion of the First Virginia.

Q. On Hood's left or Longstreet's left, did you find artillery?—A. Yes, sir.

Q. Did Hood's line extend quite up to the artillery?—A. No, sir; it did not. *There was a gap.*

Q. How much of a gap?—A. I don't recollect how much it was, but it was a considerable gap.

Q. Half a mile?—A. I don't know whether it was that much, but it was a considerable gap, a considerable elevation.

Q. Do you know where that artillery was in reference to the Browner or Douglass house?—A. No, sir; I know nothing about houses there.

Q. Were the batteries in advance of Hood's line?—A. Well, rather.

Q. Much?—A. No, sir; they were rather a little in advance of his left.

1584 Q. Was the distance between Hood's left and the right of the artillery as great as the gap?—A. According to my recollection, the battery was pretty nearly in the center of the gap.

Q. Did the line of the battery run in the same direction that Hood's line ran, or did Hood's line form an angle with the battery?—A. It was at an angle.

Q. Was the right of the battery much in advance of Hood's left?—A. No, sir; it was not much in advance, but still it was in advance.

Q. Was it a half-mile in advance?—A. O, no.

Q. Was it a quarter of a mile?—A. No, sir; I don't think it was that.

Q. Or an eighth?—A. I don't think it was that. It was a very short distance in advance. I would not say positively that it was in advance at all.

Q. If the actual position of the artillery on Jackson's right and on Hood's left was in the general line A A, where would the left of Hood have joined him, and where was the left of Hood in reference to that?—A. Pretty much where the right of Jackson was in reference to it; they sustained pretty much about the same relation.

Q. Where was the right of Jackson?—A. Pretty much to the left, in the rear of that battery, from my recollection, and about nearly the same distance that Hood's left was to the left.

Q How far?—A. About intermediate.

Q. Did you see Jackson's right come in there?—A. No; I did not see it.

Q. Mark where it did come.—A. I cannot tell.

Q. You saw Jackson's right?—A. Yes; but my recollection is that that distance is pretty much about equal, the battery being in advance of both, between Hood's left and Jackson's right.

Q. Where was Jackson's right?—A. Jackson's right at that rate would be somewhere about here (witness indicates).

Q. Where would Hood's left be?—A. Somewhere about here (witness indicates.)

Q. Is there the same distance between them?—A. To my mind they look about the same.

Q. This is a third of a mile from Hood's left to that position?—A. There is no third of a mile about it.

Q. You have not got the full distance?—A. It was just the difference between tweedledum and tweedledee. It was a very fine position for artillery, which guarded both the left of Hood and the right of Jackson.

Q. You say that Jackson was back of the left of that line of artillery as far as Hood was back of the right of the artillery?—A. That is my recollection of it.

* * * * * * *

Q. You saw no troops marching?—A. No; I didn't say that. I say I didn't know what troops they were. I saw occasionally troops on the road.

Q. Many?—A. At times I saw quite a number.

Q. How large a force did you see on the turnpike?—A. I don't know.

* * * * * * *

Q. Did you see one thousand?—A. I may have seen that; maybe more.

Q. Two thousand?—A. I cannot tell you.

Q. Did you see three thousand?—A. I cannot answer the question, because I did not charge my mind with it.

Q. Was it your impression or opinion that they were the advance or the rear of Longstreet's command?—A. It was my opinion that it was the rear, if I knew anything about it.

* * * * * * *

Q. Allow me to refresh your recollection. These guns were under the com-
1585 mand of Major Froebel?—A. I don't know; I have never asked the question.

Q. How long did you watch this cloud of dust back between Hampton Cole's and Gainesville, which occurred immediately after the sending of that order to drag brush?—A. It didn't occur until thirty minutes afterwards; I suppose I watched it four or five minutes.

Q. How long was that dust there?—A. I don't know; the dust extended down a considerable distance. I am satisfied that whenever I looked in that direction the dust was there.

Q. For how long a period?—A. I am not willing to answer the question, inasmuch as I cannot answer it with positiveness.

* * * * * * *

Q. Did you see it at various times during the period of one hour?—A. I say I saw it at various times during the period of twenty-five or thirty minutes; I know that in that space of time I was somewhat interested in it; but no further.

* * * * * * *

Q. Did you follow the line of the railroad at all in going back there?—A. I went part on the railroad after I left Hampton Cole's.

Q. How far did you follow this railroad?—A. I don't recollect anything more than that I went part of the way on a railroad.

Q. Did you turn to the right or left after striking the railroad?—A. I don't recollect that; I recollect nothing at all about it, in regard to the items, as to my taking such a road as that.

* * * * * * *

Q. Would not any considerable body of men in line of battle have made an impression upon you?—A. No, sir; would not have made a bit of impression, unless there was something in the case to particularly strike me.

Q. Then they might have been there or not?—A. Might have been there or not. I could not testify as to whether they were or not.

* * * * * * *

Q. About what time of day did you first see Longstreet's troops in position after that?—A. I saw them in position, I think, somewhere about three o'clock, or a little after three, or a little before three.

* * * * * * *

Q. This position that you have given General Jackson here as his right, was that based on the supposition that was given you by the counsel on the other side, or from your recollection?—A. I base nothing upon any supposition from anybody. I have had no conversation with anybody about these things.

Q. You misunderstood my question. Did you notice a mark that you put there?—A. I told you a while ago I was sorry that map was marked, because I wanted to do my own marking. I was trying to locate that thing all the time, and what bothered me was that somebody else had been marking.

Mr. MALTBY. There was only one mark there. That is the Henry Kyd Douglass map.

The WITNESS. Intermediate between Hood's left and what I recollect on Jackson's right there was a space. It was an elevated position, and this large battery not only guarded Hood's left, but Jackson's right, if necessary. That is the impression I wanted to make.

It will be perceived that Major White, the Rev. John Landstreet, Mr. Carrico, and Mr. Munroe all speak positively of Union troops at and in the vicinity of the "Lewis-Leachman" house during the morning and into the afternoon, which is confirmed, as we shall see, by the evidence of Brevet Major-General Sickles, Brevet Brigadier-General Barnes, and other Union officers of the Pennsylvania Reserves.

Therefore when Longstreet says he was at the Lewis-Leachman house between 11 and 12 on that day (Board's Record, p. 73) we must charitably conclude that he has confounded the twenty-ninth with the thirtieth day's operations.

He undoubtedly was there on the 30th, but the Union troops
1586 were then nowhere in the vicinity. One thing is particularly noticeable in this case, and that is that witnesses' recollection as to the time of occurrence of events in which they were not immediately and directly concerned, or which they saw, varies so much that it must be taken with very great allowance.

The sequence of events, or a diary made at the time, will give a better indication of the facts, and in this connection I regret that the diaries which some of the government witnesses had were not spread upon the record.

All these witnesses, White, Landstreet, and Munroe, put the formation of the divisions under Longstreet *behind* "Pageland lane."

Hood's division appears to have been somewhat in advance of the rest of the line, with the Texas brigade on the south of the pike.

Henry Kyd Douglas, Jackson's assistant adjutant-general, has indicated Jackson's right, which was turned off northwesterly beyond the beginning of the word "Independent." (See map.)

That ridge there, "Stony Ridge," was 270 feet high, and along it in rear of Jackson's line was placed the artillery which played over his own lines 50 feet below and behind the "Independent Manassas Gap" embankment into the Union lines formed parallel to his own.

It was on the continuation of this 270 feet high ridge, which formed a perfect glacis down to the northerly fringe of the "Gibbon wood," that Colonel Walton's eighteen or twenty guns were placed, just where the Rev. Mr. Landstreet and Major White placed them, and not on the low ground southeast of the "Browner-Douglas" house, where petitioner, for purposes of his own, would put them in order to get Longstreet's line forward of its actual position.

The map before us, prepared under Major Warren's direction by Capt. J. A. Judson, who is in the government service under him, omits many very material points on this end of the line, as, for example, Stuart's Hill, and the continuation of the ridge which runs northwest from the westerly end of the "Gibbon wood" and joins the ridge on which Longstreet's artillery was placed and the high ground west of Pageland lane.

POSITION OF UNION FORCES SOUTH OF THE WARRENTON PIKE.

The position of the troops south of the pike is important in determining what were the petitioner's opportunities which were lost by his fatal inaction on the 29th.

In the first place the battle was directed against Jackson, who awaited attack in a position of great strength behind the Independent Manassas Gap Railroad cut and filling; the right of his line following the direction of the railroad approached the turnpike at a small angle.

The position of General Pope's line accommodated itself to Jackson's, and thus Heintzelman's corps, part of Reno's division of Burnside's corps,

and part of Sigel's corps, were north of the pike, and the remainder of Sigel's and Reynolds' division south of the pike, not in the position petitioner places them, due south, along Lewis Lane No. 1, but conforming to Jackson's line.

Thus, after Schenck's division of Sigel's corps and Reynolds' division of McDowell's command had moved forward in line of battle south of the pike, driving Early's skirmishers from the Thirteenth and Thirty-first Virginia of Jackson's command before them, they swung around by a right half-wheel with the right of Schenck's division pivoted on Groveton, and brought up the left (which was under Reynolds) 1587 to and across the Warrenton pike, near Meadowville lane, *in order to attack Jackson's right.*

Maj. Gen. R. C. Schenck, as we shall see, and also Maj. Gen. Franz Sigel, express great doubts as to Longstreet having been in their front in any force during these movements.

Emor B. Cope, then sergeant Company A, First Pennsylvania Reserves, Reynolds' division, called by petitioner (Board's Record, p. 918), in rebuttal, puts Reynolds' division just east of Compton's lane, where it remained most of the day, and near dusk General Reynolds was at a point south of Young's Branch and about 400 feet east of Lewis' lane. The witness positively stated that there was very little skirmishing—"very feeble indeed."

The late Col. *Owen Jones*, formerly First Pennsylvania Cavalry, who succeeded this witness, also in petitioner's behalf, and heard his evidence (Board's Record, p. 926), swore that Reynolds "advanced with one or two brigades of reserves and had quite a severe skirmish"; and Reynolds, in his official report, mentions the very brigade of the witness Cope as one of those engaged. The latter put his regiment in camp east of the Chinn house hill on the night of the 28th (Board's Record, p. 921), in a place where, according to his story, they were shelled, but the contour map shows conclusively that the location was such as to screen them from the enemy.

Col. *Owen Jones*, First Pennsylvania Cavalry (Board's Record, p. 929), says he first thought that about 2 p. m. he was on Reynolds' left near Compton's lane, but on cross-examination admitted that up in the direction towards Cunliffe's and Meadowville he "passed very near the head of that ravine, and moved out into an open field, and forward, and then discovered that there was a large force in the woods, which Reynolds went over to attack." He fixes the time at about 2 p. m., and says he kept within 500 feet of Reynolds' left, but would not attempt to designate the woods on the map, but says that at one time during the day (Board's Record, p. 928) he came across a hospital, that had been, of King's division the night before. This, of course, must have been the hospital in the Gibbon wood, as there was no other. It is also plain that as Col. Owen Jones, petitioner's witness, thus corroborates the numerous government witnesses as to Reynolds' division being near Meadowville lane at 2 p. m., Longstreet could not have been east of Reynolds and behind him in the Gibbon wood by 10.30 or 11 a. m. The position Col. Owen Jones admitted Reynolds was in at 2 p. m. shows that petitioner could have moved his own corps up without hindrance to the point General McDowell had indicated before he left him (petitioner) two hours before.

Maj. Gen. *Franz Sigel*, United States Volunteers, a corps commander, called on behalf of government, testified as follows (Board's Record, p. 941):

Q. by RECORDER. Do you know how far Schenck's division advanced that day?—A. I know from his report that it advanced as far as the battlefield of Gibbon and Double-

day of the evening before, the night of the 28th, and from this I suppose that he was there; but I know by my own eyes that he marched from the Bald Headed Hill, where I posted him first, and where the artillery was posted; that he advanced through the woods, and tried to get in and get across the road, across the Warrenton road, and attack the enemy's right wing; and he was prevented from getting across the road by the enemy's position on the ridge, which enfiladed his advance on the right.

Q. Then as to the afternoon?—A. In the afternoon one of my divisions on the right was relieved by the troops of General Hooker, and, I think, General Reno; but General Schenck and General Milroy remained in line of battle.

1588 By the PRESIDENT OF THE BOARD:

Q. You spoke of General Schenck's division having advanced on the left of the Warrenton pike with the design of striking Jackson's right; at what hour of the day did he reach his most advanced position?—A. I think it was between twelve and one, or about one o'clock; it may have been a little later; but that was the time, about.

Q. Then he was induced to retire by some firing that you speak of, and he crossed the Warrenton pike toward the north for the purpose of striking Jackson's right, because the fire was received from what direction?—A. From the right of Jackson on a ridge, there were artillery there; and when he advanced he presented his left flank to this fire; but then he was under the necessity of assisting Milroy, who was on the right; and this space between Schenck's right and Milroy's left was almost uncovered; so I know very well that I ordered General Schenck to draw more to the right to connect with Milroy, and then he sent one of his brigades to the right to connect with Milroy.

Q. Was Schenck wholly to the left of the Warrenton pike?—A. He was, at the commencement of the advance; but then during the movement in advance he sent one of his brigades—he had two brigades—sent one of his brigades to the right, across the pike, to assist Milroy; that was only temporary. Then afterward, when the troops of General Stevens came and I put him in there, I ordered him to the left, and he took line with Schenck on the left of the road.

* * * * * * *

Q. Where was General Reynolds' division during your advance; did you know of it then?—A. I knew that it was somewhere near to our line.

Q. On which flank?—A. On my left.

Q. You knew Reynolds was somewhere near your left?—A. Somewhere near my left; I don't know exactly where he was, because I was so much engaged with my own troops that I could not get away to look for him. I found out that during the day he maneuvered on the left; advanced on our left, and was with General Schenck in communication; and it was reported to me so when he came there.

* * * * * * *

A. Some of them—only the division of General Schurz was relieved; this was at two o'clock; Schenck remained here all day.

Q. After he fell back from this position (Gibbon's)?—A. Yes, and so did Milroy.

By Mr. BULLITT:

Q. It was McLean's brigade that was south of the pike, was it?—A. Yes; he was under General Schenck; he commanded the left brigade; this brigade was on the left, Stahel's was on the right, therefore he was this side of the road south.

By the RECORDER:

Q. You say that General Schenck maneuvered through Gibbon's battle-ground, and got there, I think you said, about one o'clock. Now, do you know how long he remained on that battle-ground before falling back, according to the report that was made to you? There was a battery in action, was there not, there?—A. My impression is this, that he remained there and around there about an hour, I think, from one to two o'clock; at least I would not say that he was always in one place, but he maneuvered around there (Gibbon's battle-ground).

By the PRESIDENT OF THE BOARD:

Q. That you get from the report of General Schenck?—A. Not only from the report, but from the reports sent me. I identify the place from his report, and reports were sent by his officers and by my own that he was about a mile in advance.

Q. The reports received on the battle-field at that time?—A. Yes; and I see from his report that this is the place.

Maj. *S. N. Benjamin*, U. S. A. (then first lieutenant, Second Artillery, Stevens' brigade, Reno's division, Burnside's corps), thinks he himself went into position with his battery about 12½ p. m. (Board's Record, p. 614). He says it was very still for half an hour and then got engaged himself.

Benjamin put his battery with his right near the Warrenton turnpike and his left south of it on the ridge about two hundred yards from Groveton. The Board will recollect that General Sigel, after
1589 having given his evidence and been cross-examined (p. 944), said, after the brief recess, that he desired to correct his testimony, to the effect that General Schenck retired from his advance position between twelve and one, instead of between one and two, because Brig. Gen. Isaac I. Stevens, of Reno's division, came up and went into position in Sigel's line between eleven and twelve. He added, however, that he was not absolutely positive in regard to the time in this case; this, although Colonel Chesebrough's official report to himself of Schenck's division on that day, with specific hours noted, had been put before him.

The invaluable diary of Major-General Heintzleman, however, who noted the hours, said Hooker got up about eleven; General Reno about an hour later. At this time of day, Heintzleman fixes his own headquarters on the field about a mile from Stone Bridge. His headquarters must have been on Buck Hill north of and near to Warrenton pike, because he says, after mentioning Reno's arrival, that soon after General Pope arrived, about a quarter to two.

For Reno to march from stone house, on the Warrenton pike (which was a little nearer Sigel than Heintzleman's headquarters), to the position of Sigel's corps at Groveton was a trifle over a mile and a quarter; Sigel's own headquarters were on the "Chinn house hill."

From this it is apparent that Stevens did not get up with Sigel's corps to go into position until within a quarter to one, or one o'clock.

This is confirmed by the evidence of Maj., then Capt., Oliver C. Bosbyshell, Forty-eighth Pennsylvania Volunteers, first brigade, Reno's division, Burnside's corps, who says the division arrived on the field at 1 p. m. (Board's Record, p. 872).

Sigel says Schenck was a mile in advance of his corps' position, near Groveton, maneuvering around Gibbons' battle-ground (p. 944).

Chesebrough, the assistant adjutant-general, puts this at between 1 and 2 p. m., and Sigel, before having his attention called to the matter, gave about the same time as his own impression in response to a question of the President of the Board (p. 942). He also was disposed to admit (p. 944) an hour's time as having elapsed between the arrival of Stevens and the retirement of Schenck from his most advanced station during the day. Thus, by the aid of General Heintzelman's diary, we find that General Sigel's impressions as he first gave them in evidence correspond with the specific statements of Colonel Chesebrough, who, as assistant adjutant-general, appears to have noted the time. It is to be regretted that his absence abroad has prevented his own corroborative evidence being obtained.

Brigadier-General *Stahel's* brigade, which was the right brigade of Schenck's division, had to be taken still farther to the right to aid Milroy, and Stevens' brigade supplied its place, but it soon returned (Board's Record, p. 507).

When General Sigel says that he took line with Schenck on the left of the road (p. 943), it must not be supposed that this line was formed perpendicular to the Warrenton pike; on the contrary, they were nearly parallel to it, making but a slight angle at Groveton, because Milroy's independent brigade and Schurz's division of Sigel's corps were north of the pike, and fighting Jackson, who was behind the Independent Manassas Gap Railroad, running also nearly parallel with the pike. In other words, the line that General Pope's army was taking in attacking, was conformed to the "Independent Line of the Manassas Gap Railroad."

Thus having a line of battle parallel to Jackson's, the left of Schenck's division was up near Gibbon's battle-ground of necessity, and Reynolds on *his* left.

1590 Therefore, when Reynolds undertook to attack Jackson's right naturally he was up near Cundiff's, at Meadowville lane.

That this was deemed by Sigel both possible and probable is evinced by his own report of the 16th September, 1862 (Board's Record, p. 504); said he:

> Scarcely were these troops in position when the contest began with renewed vigor and vehemence, the enemy attacking furiously along our whole line from the extreme right to the extreme left. The infantry brigade of General Steinwehr, commanded by Colonel Koltes, was then sent forward to the assistance of Generals Schenck and Schurz, and one regiment was detailed for the protection of a battery posted in reserve near our center. The troops of Brigadier Reynolds had meanwhile (12 o'clock) taken position on our left. *In order to defend our right, I sent a letter to General Kearney, saying that Longstreet was not able to bring his troops in line of battle that day, and requesting him (Kearney) to change his front to the left and to advance, if possible, against the enemy's left flank.*

Therefore, if General Sigel did not think Longstreet was able (when he wrote his letter to Kearney after twelve) to bring his troops in line of battle that day, it is plain he had not then any ground for withdrawing Schenck from the position near Gibbon's battle-ground, which Schenck, as we shall see and have seen, maintained nearly all that day.

On this subject the report of Brigadier-General R. C. Schenck (by Col. William H. Chesebrough, A. D. C. and A. A. A. G., Schenck's division, Sigel's corps), says (Board's Record, p. 514):

WASHINGTON, D. C., *September* 17, 1862.

* * * * * * *

On Thursday, 29th ultimo, we left Buckland's Mills, passing through Gainesville, and proceeded on the Manassas Junction pike to within some four miles of that place, and then turned eastwardly, marching toward "Bull Run." The scouts in advance reported a force of the enemy, consisting of infantry and cavalry, in front. We were hurried forward and formed line of battle with our right toward Centreville. Some few shells were thrown into a clump of woods in front, where the enemy were last seen, but without eliciting any response. Some two hours elapsed, when heavy firing was heard on our left, which we concluded was from McDowell's corps and the enemy, who had worked around from our front in that direction. We were immediately put in motion and marched on the Warrenton road, and took position for the night on a hill east of the "stone house," our right resting on the pike. On Friday morning early the engagement was commenced by General Milroy on our right, in which we soon after took part, and a rapid artillery fire ensued from both sides. For some time heavy columns of the enemy could be seen filing out of a wood in front, and gradually falling back. They were within range of our guns, which were turned on them, and must have done some execution. An hour after we received the order to move one brigade by the flank to the left and advance, which was done. We here obtained a good position for artillery, and stationed De Beck's 1st Ohio Battery, which did excellent service, dismounting one of the enemy's guns, blowing up a caisson, and silencing the battery. Unfortunately, however, they were poorly supplied with ammunition, and soon compelled to withdraw. Our two brigades were now put in motion. General Stahel, commanding first brigade, marching around the right of the hill to a hollow in front, was ordered to draw up in line of battle and halt. Colonel McLean advanced around the left of the hill under cover of the woods, pressing gradually forward until he struck the turnpike at a *white house*, about one-half mile in advance of the stone house. General Milroy's brigade arrived about the same time. We here halted and sent back for General Stahel, who took the pike and soon joined us. We then formed our line of battle in the woods to the left of the pike, our right resting on the road, and then pushed on slowly. Milroy, in the meanwhile, had deployed to the right of the road, and soon became engaged with the enemy. Our division was advanced until we reached the edge of the woods and halted. In front of us was an open space (which also extended to the right of the road and to our right), beyond which was another wood. We remained here nearly an hour, the firing in the meanwhile becoming heavy on the right. The enemy had a battery very advantageously placed on a high ridge behind the woods in front of Milroy, on the right of the road. It was admirably served and entirely concealed. Our position becoming known, their fire was

directed toward us. The general determined, therefore, to advance, and so pushed on across the open space in front, and took position in the woods beyond. We here discovered that we were on the battle-ground of the night before, and found the hospital of Gibbon's brigade, who had engaged the enemy. The battery of the enemy
1591 still continued. We had no artillery. De Beck's and Schirmer's ammunition having given out, and Buell's battery, which had reported, after a hot contest with the enemy (who had every advantage in position and range), was compelled to retire. It was now determined to flank the battery and capture it, and for this purpose General Schenck ordered one of his aids to reconnoiter the position. Before he returned, however, we were requested by General Milroy to assist him, as he was very heavily pressed. General Stahel was immediately ordered to proceed with his brigade to Milroy's support. It was about this time, one or two o'clock, that a line of skirmishers were observed approaching us from the rear; they proved to be of General Reynolds. We communicated with General Reynolds at once, who took his position on our left, and at General Schenck's suggestion he sent a battery to our right in the woods for the purpose of flanking the enemy. They secured a position and were engaged with him about an hour, but with what result we were not informed. General Reynolds now sent us word that he had discovered the enemy bearing down upon his left in heavy columns, and that he intended to fall back to the first woods behind the cleared space, and had already put his troops in motion. We therefore accommodated ourselves to his movement. It was about this time that your order came to press towards the right. We returned answer that the enemy were in force in front of us, and that we could not do so without leaving the left much exposed. General Schenck again asked for some artillery. General Stahel's brigade that had been sent to General Milroy's assistance, having accomplished its object under a severe fire, had returned, and soon after General Stevens reported with two regiments of infantry and a battery of four twenty-pound Parrott guns. With these re-enforcements we determined to advance again and reoccupy the woods in front of the cleared space, and communicated this intention to General Reynolds. He, however, had fallen back on our left some distance to the rear; he was therefore requested to make his connection with our left. The Parrotts in the meanwhile were placed in position, and under the admirable management of Lieutenant Benjamin did splendidly. Two mountain howitzers also reported, and were placed on our right in the edge of the woods near the road, and commenced shelling the woods in front of the open space, which were now occupied by the enemy, our skirmishers having previously fallen back. The artillery fire now became very severe, and General Schenck was convinced that it was very essential that he should have another battery, and so sent me to you to get one. I arrived to find one, Captain Romer's, just starting. You also directed me to order General Schenck to fall gradually back, as he was too far forward. This he had perceived, and, anticipating, fell slowly back, placing his division behind the slope of the hill in front of the one we had occupied in the morning. Captain Romer's battery in the meanwhile had taken position in front of the white house on the right of the pike, a little in advance of the hill on which we were. Lieutenant Benjamin's battery had suffered severely, so much so that he reported only one section fit for duty, the other having lost all its cannoniers. They were placed in position and fired one or two rounds at the woods in front of the position we had just left, more to get the range than anything else. We were now ordered to descend the hill, cross the road, and take up our position behind the house, in front of which was Captain Romer's battery. This we did, deploying the brigades in line of battle, the second brigade in front and the first brigade in the rear. We remained so during the night.

The above report is respectfully submitted, with the remark that it is made without any communication with General Schenck, he being severely wounded, and prevented by his surgeon's orders from attending to any business whatever. And although fully assured that the main points are correct, there may have been some orders or movements of minor importance, which, in my position as aide, carrying orders, might not have come within my notice.

As General Schenck, who had been wounded the day before, was unable to make the report, Colonel Chesebrough made it; though it appears in the evidence of General Schenck that he was with him at the time and in constant communication with him.

Colonel Chesebrough wrote a letter to General McDowell in reply to Brigadier-General Reynolds' letter on the subject (Board's Record, p. 501), which is as follows:

LETTER OF COLONEL CHESEBROUGH TO MAJOR-GENERAL M'DOWELL.

WASHINGTON, D. C., *October* 20, 1862.

GENERAL: In reply to General Reynolds' letter of the 9th instant, I have the honor to make the following remarks:

I can discover but little difference between the statements of General Reynolds and my report.

He states firstly, "That his division manœuvred on our left from early in the morning until we had gained the position alluded to on the pike, near Gibbon's battle-
1592 ground of the evening previous." This I do not attempt to deny. I merely give in my report the time when *we* first became acquainted with his (General Reynolds') position.

He then says that "it was here that General Schenck asked me for a battery," which agrees entirely with my report, with the exception that I did not enter so much into the details. He then remarks that, "in returning from this position to bring up the other battery and Seymour's brigade, I passed through Schenck's troops drawn up on the *right* of the woods before alluded to, in which Gibbon had been engaged." But in bringing up the battery and Seymour's brigade, he noticed that "Schenck's troops had disappeared from this position, and were nowhere in sight." In the first place General Reynolds is incorrect in his impression of our position.

Our troops were always on the left of the pike throughout the day, except when the brigade under General Stahel was sent to Milroy's assistance.

Our position before Stahel moved was in the woods which had been occupied as a hospital by Gibbon's brigade, to the left of the pike, General Stahel's right resting on the road and Colonel McLean's brigade on his left, the woods in which Gibbon had had his principal fighting being across the pike and to our right.

At the time that General Reynolds returned from placing the battery and Meade's brigade it is probable that he passed through General Stahel's brigade, which was in motion and had gained the right of the pike on its way to join Milroy, and that afterward, when General Reynolds was bringing up Ransom's battery and Seymour's brigade, they were gone, which accounts for his impression that "he was left alone." He soon discovered his error, however, as he states in his letter, "in doing which McLean's brigade was discovered."

Colonel McLean still held his position, and was immediately moved so that his right would rest on the pike, and General Reynolds made his movement to correspond.

It was about this time that our position was changed, but not because we had ascertained that we were disconnected with the rest of Sigel's troops.

We *had been* and *were* well aware of our position.

It is true we had advanced further than was intended, being constantly urged by General Sigel to advance, and pressed toward the right, he evidently not understanding our true position. We fell back, however, on account of the information received from General Reynolds that the enemy were bearing down on his left. General Reynolds did not communicate directly with General Schenck, as it would appear from my report, but the information was received through Colonel McLean, who told General Schenck that General Reynolds had informed him "that the enemy were bearing down, &c., and that he (Reynolds) intended to fall back, and has actually commenced the movement." Colonel McLean wished to know if he should act accordingly. General Schenck directed him to accommodate himself to General Reynolds' movement.

We retired slowly across the open space to and within the woods and halted. General Stahel rejoined us here, and General Stevens also reported with two regiments of infantry and a battery. General Stevens' force was thrown to the right of the pike, General Stahel on the left of the pike, and Colonel McLean on the left of Stahel. I here state in my report that General Schenck, on receiving these re-enforcements, determined to advance again, and communicated his intention to General Reynolds. I carried this message myself, and after some difficulty found General Reynolds, and requested him to halt and form on the left of McLean. He had fallen back, however, some distance to the rear of McLean's line of battle, so much so that the enemy's skirmishers had actually flanked us, and in returning to the division I had a narrow escape from being captured. I also asked General Reynolds to ride forward to meet General Schenck, who had directed me to say that he would be at the extreme left of our line for that purpose. General Reynolds neither gave me any positive answer as to whether he would meet General Schenck or any information as to what he intended to do. I do not know if he complied with the request to make his connection on our left, as, on my return to General Schenck, I was immediately sent to General Sigel to represent our position; and when returning again with the order to General Schenck to retire slowly, I met the command executing the movement.

My report was intended merely as a sketch of our movements for General Sigel's information, and I endeavored throughout to be as concise as possible, and confine myself solely to the operations and movements of our division. I now submit the above statement, trusting that the explanations will be satisfactory to General Reynolds.

Hon. *Robert C. Schenck*, late envoy extraordinary and minister plenipotentiary to Great Britain, brigadier-general of volunteers, commanding the first division of Sigel's corps, wounded and promoted major-gen-

eral on the 30th August, 1862, being duly sworn, testified as follows (Board's Record, p. 1082):

Q. Where was that division early on the morning of that day, August 29?—A. We were upon the hills below Bull Run, up in the neighborhood of Young's Creek.
1593 Q. North or south of the Warrenton turnpike?—A. South of the Warrenton turnpike.

Q. In reference to the Manassas and Sudley road, running up there to the stone house and Sudley Springs—east of it or west of it?—A. That must have been west of it.

Q. Where did you go to from that point where you camped the night before?—A. Along the left side, the southerly side of the turnpike.

Q. What formation was your division in?—A. I had Stahel's brigade upon the right and McLean's brigade to the left, moving along south of and parallel with the turnpike.

Q. Were they in column or line of battle?—A. They were for the most part of the time in line of battle.

Q. About what time did you make that forward movement westerly?—A. We set out very early in the morning, I cannot recollect the hour, and continued moving, with rests and delays, until we reached the farthest point that we attained to, which, as I recollect, was a wood, in which some of Gibbon's troops had been engaged the night before. After that, I withdrew toward the position that I had occupied in the morning, though not quite as far as to that position; by those two movements I occupied the day.

Q. In moving up to this position, did you have in the morning of the 29th of August any enemy in front of you?—A. None, that we felt; throwing forward skirmishers and supposing the enemy was present somewhere. Pretty early in the day a force of the enemy was developed upon this ridge, where there were a number of batteries placed to our right; that would be to the north of the turnpike road.

Q. Do you recollect passing that lane, Lewis lane No. 1?—A. I have a very indistinct impression of it. I have a remembrance floating in my mind having crossed some road which was not the turnpike, but I don't recall it distinctly.

Q. At what time of the day did you reach your farthest point in advance?—A. I think it must have been somewhere about the middle of the day; perhaps a little earlier than the middle of the day.

Q. Did you see General Reynolds' division during that day?—A. No; but I understood he was off on my left.

Q. Did you see General Reynolds himself during the morning or afternoon?—A. No; I think not. I don't recollect.

Q. How far did you get beyond the Gibbon's wood in which the wounded of the night before were?—A. I don't know that we got beyond the Gibbon woods. My remembrance is that the farthest point we reached was somewhere about the west edge of the Gibbon wood—that is, the wood in which Gibbon's troops were engaged the night before. We found there his wounded and the evidence of the battle that had taken place.

Q. Was anything done with these wounded that you found there?—A. I ordered all the men in that and the piece of woods this side of that, where there were, I think, a few scattered, to be sent to the rear and taken care of. I don't know that that is the Gibbon wood; I mean the wood farthest in advance that I reached was the wood in which the engagement took place. My impression is we did not at any period go farther in that direction than to, perhaps, the west edge of that wood.

Q. Look at the map; which piece of timber is it that you consider to be the Gibbon wood?—A. *This* I suppose to be the wood. [In which the word "Warrenton" ends; marked S on the Landstreet map.] That I suppose is intended for the wood in which Gibbon's engagement took place.

Q. How long did your division remain in that woods?—A. We must have been in that wood altogether two or three hours.

Q. Did you see any battery of the enemy while you were in that position? If so, where was it?—A. There was a battery off to our right somewhere, which I recollect all the more distinctly because it seemed to me to be detached from the general line of the enemy, and I conceived the purpose of attempting to capture it, and sent one of my staff over to reconnoiter with a view to see how it mignt be approached. But about that time Milroy, who was engaged with the enemy off to my right, communicated with me, or General Sigel for him—I think the message came from Milroy himself—begging assistance, and I detached Stahel's brigade to support Milroy northeast of the pike, and then gave up the idea of attempting to capture that battery.

Q. That battery was in the neighborhood of where?—A. It was on a hill on my right, to the right of the wood where Gibbon's fight had taken place. It was upon elevated ground, and seemed to be the spur of a hill. I thought we might by a sudden and decisive movement upon it capture it.

1594 Q. While you were up in this position, McLean's brigade, I understand, was on the left. What was the position of Reynolds' division of Pennsylvania reserves as reported to you at that time in reference to your own position?—A. I did not see them, but they were reported to me as being upon our left, and I may add that it was reported to me that they had stationed a battery somewhere in advance of Gibbon's wood, I think Cooper's battery.

Q. In which direction was that battery operating?—A. Did not see the battery.

Q. At what time did you quit with your division this Gibbon wood?—A. I should think, to the best of my recollection, somewhere between one and three o'clock. I don't think I can be more positive than that. My recollection is that it was some time after noon.

Q. To what point did you go then with your division?—A. In consequence of reports made to me in reference to the movements of General Reynolds, I thought it best for me to fall back, and I came into a strip of woods which I supposed to be these [south of the syllable "ville" in "Gainesville"]. I formed in line of battle near the west edge of that woods. There we lay most of the afternoon.

Q. Up to what time?—A. I can scarcely tell you. I should think at least until the middle of the afternoon, perhaps later. I recollect withdrawing from that point from wood to wood as we had advanced. We found it quite late in the afternoon, or quite sunset, by the time I reached my original position. The whole distance, I should think, was about two miles from the point where we started in the morning to the farthest point to which we advanced.

Q. While you were in the Gibbon wood, what enemy, if any, did you see in your immediate front?—A. I cannot say that I saw any enemy in our immediate front. There were skirmishes in that direction, and as my skirmishes were thrown forward we would have an occasional shot, but there seemed to me at that time to be no enemy in front—in my immediate front. The first intimation that I had that the enemy in considerable force were upon our left was through Colonel McLean, the commander of my second brigade, who told me that a messenger, or staff officer, or orderly, or some one from Reynolds, apparently with authority, had come to him, as he was in command of a brigade, and communicated the fact that the enemy were upon our left, and I think that was coupled with the information that Reynolds intended to fall back. I tried to communicate with Reynolds again, but did not succeed, but I thought that there was no occasion for immediately falling back; but not finding any response from General Reynolds, I concluded to withdraw slowly to at least a short distance and then come across an open space into the next wood [into a little strip marked S 2], where I rested the troops in line.

Q. While you were holding position in that little strip of woods, do you know whether or not the enemy obtained the possession of the Gibbon wood?—A. I am satisfied that they were not there in any force; they had their skirmishers thrown forward as I had men toward the Gibbon wood, and there were occasional shots fired with or without good cause for them, but there was no movement in force, nor was there indicated to me any presence of an enemy in force.

Q. Can you fix with any degree of relative certainty the time in the afternoon when you quit the little fringe of woods marked "S 2"; whether it was two or three or four or five or six o'clock?—A. The days in August are pretty long. I should say it was at least the middle of the afternoon, or probably later. I reached my conclusion from measuring it by the movement forward and the gradual withdrawal of the troops. I should think it was after the middle of the afternoon.

Q. Do you mean to say three or four o'clock?—A. I should think later, perhaps; from one to seven. I should think it was as late as four o'clock; of that I cannot be positive at all. Such is the impression when I attempt now to recall the circumstances and the movements.

Q. Have you seen the official report of the action of your division that day, made by your assistant adjutant-general, Colonel Chesebrough?—A. Yes.

Q. Was that report made under your direction or with your knowledge?—A. It was brought to my attention after it was made, when I was able to see and read it, and of course I read it with a great deal of interest, but my recollection is that I was neither able to dictate to him nor did I give him any points in regard to his report unless it was to suggest that favorable mention should be made of certain officers.

Q. Did you see that report before it was finally filed?—A. I doubt if I did. I think it must have been before I saw it.

1595 Q. During the day did you know of any battle in progress at any time; if so, what was its character and where was it?—A. The fight was principally on our right. There was apparently a range of batteries to our right, which in the earlier part of the day directed their fire against a battery of Benjamin's that was drawn up upon the spur of a hill. There was fighting which I did not see, but which was reported to me as going on, and of which I could hear by the continual reports of musketry, that I supposed to have been Milroy's forces. But on our side of the turnpike there was no serious engagement of any kind during that day.

Q. Do you know when any of the rest of General Lee's command of the Army of North Virginia came to the assistance of Jackson's forces? If so, when?—A. I do not; I can only give you the impression we had at the time of when they effected anything like a junction.

Q. What was it?

Mr. MALTBY. I object to impressions.

A. I think there was no junction of their forces until in the night or very early next morning. That I do not know, however. That was our conclusion, situated as we were.

Q. This firing that you heard to your right—what was its character—artillery, infantry, or both?—A. Principally artillery.

Q. How long did it continue during the day?—A. That I cannot tell you; but during a part of the time there was evidently a sharp engagement with small-arms.

Q. Towards dusk, do you know of any firing? If so, what was its character?—A. I don't recollect.

Q. What were the losses of your division that day?—A. I cannot tell you without refreshing my recollection.

Cross-examination by Mr. MALTBY:

Q. Where did you start from on the morning of the 29th?—A. On these hills, as I recollect, south of the turnpike, and not far from the position where the fight took place on the 30th.

Q. Under whose immediate command were you?—A. General Sigel's.

Q. At what time did you leave that position? Was it near the Chinn house, or where was it?—A. It must have been somewhere in the neighborhood of the Chinn house. I recollect the Chinn house more in connection with the fight of the next day. It was upon those hills.

Q. What time did you leave that position?—A. Quite early in the morning. I cannot indicate the hour.

Q. At daybreak?—A. I think I ordered the men to take their breakfasts, but it must have been an early breakfast; it must have been at least by sunrise or earlier. We began the movement, perhaps, at daybreak.

Q. Where did you first take positon in line of battle?—A. That I cannot distinctly recollect, but it was some time before we reached the wood where Gibbon was engaged, and I think the greater portion of the distance we were thrown into line, and Stahel with his first brigade marching on the right and McLean on the left in line.

Q. Those were the only two brigades composing your division?—A. Those were the only two brigades that I had there at that time.

Q. How far did Stahel advance with you?—A. Up to near the wood in which Gibbon was engaged, I think.

Q. Did he retire before you retired from that position?—A. He was sent over to sustain Milroy.

Q. Then you were left with McLean's command alone?—A. I think Stahel did not join us until after the backward movement.

Q. Did Stahel move up on the right of the turnpike in advancing?—A. I think a portion of the time his command was upon the right of the turnpike, but I am not sure that his right did not rest on the turnpike, making the whole of my line to the left of the turnpike. I recollect riding in the turnpike myself.

Q. Did you march rapidly from your position where you breakfasted to where you formed line of battle; previous to your forming line of battle, did you advance rapidly?—A. No. My recollection is that all the way through the day we moved but slowly from one patch of woods to another across the intervening distance, feeling our way; we would generally rest in a piece of wood and sent forward skirmishers, and then move forward across the open space.

1596 Q. How many men had you in your command?—A. I cannot recollect; they were average brigades.

Q. Do you recollect a battery under Benjamin?—A. Yes, sir.

Q. Where was that stationed?—A. On a point which I could indicate if I were on the ground.

Q. Have you been on the ground since the battle?—A. No; not that part of the ground. Immediately after the war I went down to Manassas and went across in a wagon, out of curiosity, to see the ridge upon which I had been wounded, but I did not go over the field.

Q. How far to the front did Benjamin's battery get, as you recollect?—A. It was placed to our right. I should think somewhere upon a spur about *here*.

When General Schenck thus places Benjamin's battery on the right of the division, he does not mean that his line of battle was perpendicular to the pike at Groveton and at right angles to the rest of General

Pope's line on *his* right, but that his own line was nearly parallel with the pike, in continuation of General Pope's line, conforming to the Independent Manassas Gap Railroad, and that his left was up in the Gibbon wood.

Q. Across the pike from you?—A. Across the pike.

Q. How far to your rear was he, or to your front, when you reached that farthest point, according to your recollection?—A. It was some distance to the right, and some considerable distance. I cannot say how much; possibly a quarter or a half a mile to the rear, the farthest point that we reached; half a mile, I should think, at least; probably more.

Q. At what time did you reach the position in which he was placed?—A. I was in the advance of that position before he was placed there; it was to meet the fire from these batteries as we advanced that I had Benjamin's battery placed upon an eminence here; and I discovered very soon afterwards that he had drawn upon himself the concentrated fire of a number of batteries upon the *stony ridge* where the enemy were, beyond.

Q. Where were you when Benjamin's battery was placed in the position of which we are speaking?—A. I think I may have been, as I said, from a quarter to a half mile farther west than the point where he was placed on the south side of the turnpike.

Q. With reference to your advanced point, where were you at the time Benjamin was placed where his batteries were?—A. That I cannot tell.

Q. Have you any recollection as to whether you were then in Gibbon's woods?—A. I do not recollect. My impression rather is that I was not at that time in Gibbon's wood.

Q. How long after Benjamin being placed in that position do you think that you reached Gibbon's wood?—A. I cannot tell you.

Q. How long after that opening fire began with such severity upon Benjamin?—A. After he was placed there?

Q. Yes.—A. I think he had occupied the position for some little time. Perhaps half an hour or more. He was firing an occasional shot before the enemy seemed to discover his range and position and concentrated their fire upon him.

Q. In what direction from your own command were those guns at that time? Were they immediately upon your right or far to your front and right?—A. You mean Benjamin's?

Q. No, sir; I mean the rebel battery.—A. No. If this map is to be relied upon as showing where the ridge is, if the line had been continued they would have made an acute angle with the point towards which I was moving.

Q. How far would it have been, according to your recollection, from your front to the point where their line, if prolonged, would have struck the turnpike road?—A. Their line, if prolonged, I should have thought would strike the road some hundreds of yards, perhaps a quarter of a mile, beyond the Gibbon woods; that is, if their line had been protracted.

Q. How long did you remain in the position where you were when Benjamin's
1597 battery opened?—A. I cannot tell you; I don't recollect.

Q. You were there in line of battle perhaps half a mile in his front, or perhaps a quarter?—A. From a quarter to half a mile in front.

Q. Did you lie a long time in that position before advancing?—A. We moved slowly, resting in each of these successive pieces of wood, and then marched more rapidly across the open spaces between, after having felt the wood in advance of us, until by these successive delays and marches, occupying the forenoon, we reached finally what we call the Gibbon woods.

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Q. If Lieutenant Benjamin has sworn that that was his place, and if you place his battery there as opening, how far in advance of that position would you judge you were?—A. Wherever his battery was we were to his left in advance, and I should say from a quarter to a half a mile.

Q. Do you think you were in this strip of woods, marked S^2, at the time his battery opened?—A. That, as I understand the map, is a strip of woods back to which we fell when we left Gibbon's woods, where I formed a line fronting towards the open space and towards the Gibbon woods.

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Q. How do you fix it as between one and three o'clock the time when you left Gibbon's woods?—A. Because we consumed about half a day or more in advancing to that point. We rested there for some time, and we consumed pretty much all the rest of the day in regaining our original position to which we withdrew. I make it out, therefore, that we must have reached there about midway of that time. I will add that after I was able to examine the report made by my aide, I found that he had stated

the time in his report, and was satisfied that he had stated it correctly; and I think, though I have not his report now to refer to, that he makes it somewhere between one and two o'clock.

Q. Have you ever read the report of General Reynolds?—A. I dare say I have, but not for a long time.

Q. Did General Reynolds retire from his advance at the time that you retired?—A. General Reynolds, as I have stated, was reported to be commanding the troops which were on my left when we were up in the Gibbon's woods. I had no intention of retiring from that position then, at least, nor did I know that it would become necessary for me to do so. We had then advanced about two miles on the south side of the road from the point from which we started in the morning [Warrenton turnpike]. I sent a staff-officer to communicate with General Reynolds. He returned and reported to me that there were indications of the presence of the enemy off in the front of Reynolds' skirmishing parties or pickets, and that he had mistaken his way, as he thought, and came very near being captured. I heard subsequently, or about that time, from Colonel McLean, then commanding my second brigade, that he had received a message from General Reynolds, which had been delivered to him instead of being conveyed to me, stating that Reynolds found the enemy were on his left, and to my left, of course, therefore, in sufficient force to make him think it advisable to withdraw. I had no proof of any such indications, and I wanted Reynolds to hold on, and sent accordingly to get into communication with him, so as to preserve our line, but my message, I think, never reached him, or at least he had left his position, as was reported to me, and I did not have communication with him.

Q. Is your recollection as to the time when you retired from your advanced position so strong that if General Reynolds swore (December 30, 1862) that he retired between twelve and one o'clock, or it may have been after one, that you would still say that it was between one and three, or nearer three, that you retired from Gibbon's woods?—A. I should not base my recollection upon anything that you informed me as to Reynolds' recollection. My remembrance is, as I now recall the circumstance, that it was not earlier than one—nor, perhaps later than three. It was after I had had indication from Reynolds, derived in the circuitous way I tell you, of his purpose to withdraw, and while I was in the Gibbon's wood; and a messenger was sent to communicate with Reynolds, and we found he was gone; so that he must have retired before I did. I should say I certainly did not retire before one, and as certainly not after three; but I do not think it is possible for me, from my present recollection of the circumstances, to fix it more definitely than that.

Q. What was your final position that evening?—A. We fell back to this hill which looks down into a ravine occupied by Young's Creek.

1598 Q. You moved back to Young's Creek, on the ridge just behind that?—A. Yes; I slept in a little grove. It could scarcely be called a grove. It was a clump of woods. It was made disagreeable by some cattle that had taken shelter there during the day. They were driven out that I might find shelter. It was nearly dark, and I went soon to sleep.

Q. At what time did you reach that position?—A. It must have been, I should think, not earlier than sunset. It was near to the end of the day.

Q. Was there no fighting going on on the pike in your vicinity at that time?—A. I have an indistinct recollection that shots were fired along in the evening. I cannot recall the circumstances.

Q. Did you know of King's division?—A. I had no immediate personal knowledge of them.

Q. Did you not know that they had a very severe fight in the neighborhood of Groveton that evening?—A. Evening of the 29th?

Q. Yes.—A. I think I must have known of it.

Q. In reference to that fight what was your position when it took place?—A. I was back on this hill, looking down into the ravine; I should say, at least as early as sunset.

Q. Was your whole line back there?—A. Yes, sir; I had withdrawn my force.

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Q. Did you have a watch?—A. I am in the habit of carrying a watch. I don't recollect to have been without one for a great many years.

Q. Did you fix times at all by reference to your watch on that day?—A. I dare say I did at the time, but I have no recollection now when or where I took out my watch to consult it as to time. This is sixteen years ago, you must recollect; but certain prominent facts or incidents would be, as it were, burned upon my mind without a recollection of the connecting details.

Q. Do you say that you were in the woods, the Gibbon woods, when General Reynolds retired?—A. Yes; I should say I was.

Q. Then this statement of your aide-de-camp, Colonel Cheseborough, is incorrect?—A. What is the statement?

Q. "With these re-enforcements we determined to advance again and reoccupy the

woods in front of the cleared space, and communicated this intention to General Reynolds."—A. What re-enforcements?

Q. From Stahel's brigade.—A. Stahel retired.

Q. Yes. "He, however, had fallen back on our left some distance to the rear. He was, therefore, requested to make his connection with our left."—A. My impression was that I got this report as coming from General Reynolds in relation to his movement when I was in the Gibbon woods. When I come to consider the matter a little further my remembrance is, as I think I said before, that it was not until we fell back to the strip of woods behind the Gibbon woods [S 2] that Stahel rejoined me, and therefore the probability is that I may have been there, and prevented from making an advance again upon the Gibbon woods by hearing that Reynolds was not going to remain on my left.

Q. You have stated that the enemy did not occupy Gibbon's woods during the time that you were in this strip of woods marked "S 2."—A. No; I am very sure they were not.

Q. Could you see through those woods?—A. No.

Q. Then how do you know?—A. Because I had skirmishers forward, observing Gibbon's woods, while I lay in this strip here.

Q. What time did you lie in that strip?—A. From the time we fell back from Gibbon's woods, between one and three o'clock, and we lay for several hours in the strip of woods.

Q. Do you know how far your skirmishers advanced into that wood?—A. No.

Q. Do you know where the line of the enemy's skirmishers was?—A. The enemy had skirmishers, I think, in the same wood.

1599 Q. Were they advanced far into the wood?—A. I do not know. I was not on the skirmish line, but there was no serious encounter between skirmishers anywhere; still we knew of the presence of the enemy by an occasional shot fired—or supposed presence.

Q. In reference to the time that you retired, do you think that it was rather two o'clock, as between one and three, or was it before or after that period?—A. I should say nearer two than one. I think when I say from one to three that about the average of that, two, would be perhaps the time. I will add here, because it is a part of my answer, that I may be distinctly understood, I am perfectly certain that the enemy did not occupy in force that which you call the Gibbon wood while I was yet in this strip of woods with my line of battle there. [Marked "S 2."] While I was remaining in that wood marked "S 2" the enemy did not in force at any time occupy those woods.

Q. But you did not see them yourself?—A. No, sir. It would be very easy to distinguish what you call Gibbon wood "S 1" from the other woods by the presence of indications of a battle having taken place there the night before; the wounded that we found there and the dead from that battle; and also somewhere in the turnpike, near there, I stopped to look at a caisson that was blown up.

Q. The way you have of fixing this in your mind is only in reference to the time occupied in advancing from your position in the morning by slow stages up to that point, and retiring by slow stages to a point where you camped at night, somewhat in advance of where you marched from in the morning?—A. No. If I were called upon now for the first time after a lapse of sixteen years, perhaps I should have no other standard by which to determine it than a vague recollection of that kind of measuring—marching and falling back; but after the battle, within a short time, within a few weeks, as I was well enough to become acquainted with what was said and known about the battle, there began in my mind a distinctive impression that it was not later than 1 o'clock, that my aide, who had made a report, was not wrong in his report; and by that help I have ever since carried in my mind a remembrance of the time.

Q. When did you recover from your wound?—A. I was carried to Washington, and I was out of the hotel in about seven weeks.

Q. Had you seen the report prior to your coming out?—A. Yes. Colonel Cheseborough remained with me during all or most of the time while I was lying wounded, in attendance upon me, with two or three of my staff; and during that time, as soon as I was well enough to know what he had reported, and what had been done, my attention was called to it, and he related to me the sort of controversy into which he had been drawn by reason of this statement of General Reynolds.

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By the RECORDER:

Q. You say that you are satisfied that the enemy had substantially no considerable force in the Gibbon wood after you had fallen back to the fringe of woods S^2?—A. Not while I remained in the next woods east [S^2].

Q. How do you know that?—A. The space between is not so great but that you could fire across from one wood to the other. If we had had artillery, or they artillery, we could soon, either of us, have riddled the other out from the wood. That is

one reason why I suppose they were not there in force. Another reason is that my skirmishers were out in advance and entered that wood, and occasional shots were fired over to the left of the wood, indicating that the enemy also had skirmishers in that neighborhood, but nothing more. My conclusion from that condition of things was that the enemy could not possibly be there in any very great force or any force at all. You could not very well be in one strip of woods, with another strip of woods opposite to you, neither of them large, without knowing whether there was an enemy in the other wood. An army has a good many eyes and feelers.

Q. Assuming that Lieutenant Benjamin was in a position just south of Groveton, right on the pike, firing off in a northwesterly direction toward the word "stony," where would that bring him so far as your troops are concerned?—A. I was to his left and in the advance; wherever I was to his left and advance. My impression would lead me now to think that he was just on the north side of the turnpike; he could not have been very far from the turnpike; he was upon a sort of spur or hill. I have not been on the ground.

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Q. Could not a force of the enemy have a line of pickets in the edge of this Gibbon's woods without your knowing it—in the westerly edge?—A. Hardly; until after we left this strip of woods.

1600 Q. Were there skirmishers thrown out in your front?—A. I hardly think they could have been there at any time until we left in the middle of the afternoon; I think we should have known it. As I see by your map, and as I have always understood, there are other portions of the wood farther west still, and about these I can give no information. There may be a discrepancy between my recollection and the recollection of others in regard to the piece of woods, but I speak quite confidently that Gibbon's woods up to the time of my leaving that strip of woods to the east were not occupied by the enemy.

Q. Did you carry from Gibbon's wood the Union dead and wounded?—A. Yes; it was left to others to execute the order. I gave the order that they should be taken from there. While we were in the wood I recollect them gathering the soldiers who had suffered in the engagement the night before.

By the RECORDER:

Q. Do you mean wounded or dead, or both?—A. I think both. I was particularly concerned for the wounded.

Q. Do you recollect firing by the enemy or any battle on your left?—A. I do not recollect.

Maj. T. C. H. Smith, paymaster, United States Army, then lieutenant-colonel First Ohio Volunteer Cavalry, testified as follows (Board's Record, page 367):

Q. What was the situation of affairs, as you understand it to have been, on the afternoon of August 29th?—A. The situation of affairs on August 29 was that early in the afternoon the head of Longstreet's column got on to the turnpike and fired a few shots that we heard, not knowing where they were from. I have since learned that they were from Longstreet.

Q. I ask you what you saw?—A. What I saw was this: that our left was up on the turnpike beyond Groveton and that it commanded the ground beyond Groveton, the very ground that Longstreet testifies his troops were on up to as late at least as one o'clock that day. I cannot indicate the exact position that our troops were in. I knew that they were up and beyond Groveton. * * * * I was out once or twice during the day to the Dogan house.

Q. Whose troops were those which you saw on the left?—A. Reynolds' and Schenck's; they were out there maneuvering for a position for attack.

Brig. Gen. N. C. McLean, United States Volunteers, commanding Second Brigade, Schenck's division, Sigel's corps, testified as follows (Board's Record, page 937):

Q. What time did you go into action?—A. We were ordered quite early in the day, as I supposed at the time, on the extreme left of our troops; we advanced toward the position of the enemy in line of battle with a very heavy line of skirmishers; the skirmishers were engaged more or less as we advanced, sometimes severely, sometimes very lightly, but the opposition to us was not so heavy as to prevent our advance. We advanced slowly and regularly; that was the condition of affairs. We halted at times to examine the position, and then went on again until the afternoon. Quite late in the afternoon we were ordered back into camp. During the day, exactly at what portion of the day I cannot now state, General Meade came to me and said he was ordered to take position on our left; he was in General Reynolds' division; General Meade was commanding the brigade.

Q. George G. Meade?—A. Yes, afterward commander of the Army of the Potomac; I halted and he came up with his troops; we then went on, and he took position on our left. Some time afterward—the intervals of time I cannot give you at all, regulated more by events than time then—General Meade came back with his brigade, saying to me that he had placed a battery, and he had been shelled out of his position by the rebel batteries, and had got into a hornet's nest of batteries; he was then coming back, and advised me to do the same.

Now General Meade had placed that battery upon the left and west of that "Gibbon wood," on this *same ridge on which some of the enemy's guns were placed;* and according to the official report of Brig. Gen. Jno. F. Reynolds, he appears to have been in action there—Cooper's
1601 battery and Brig. Gen. George G. Meade's brigade—for about an hour or an hour and a half. (Board's Record, p. 501.)

I reported to General Schenck, my division commander, the facts, and in a short time we were ordered back a little distance, and remained there until night-fall; we were, on the approach of night, ordered back into camp, some little distance farther back toward the position from which we had started in the morning. The position that we got into camp that night was a hill upon which our reserve batteries were placed. I cannot indicate it to you upon the map, because the map does not indicate to me what the ground was at all.

Q. Did you know Maj. George B. Fox, of Cincinnati?—A. He was in my own regiment, the Seventy-fifth Ohio.

Q. On that day?—A. Yes; he was there in that regiment, in that brigade. I had four regiments and an Ohio brigade. I was from Ohio.

Q. Major Fox has been here and testified.—A. He was a very competent and good officer.

* * * * * * *

Q. How far do you suppose you advanced forward?—A. I cannot give you an estimate; we were in line of battle the whole time from the time we moved early in the morning. We moved along for some time before we found any reply to our skirmishers; then it was continuous dropping fire; sometimes it was very severe, and sometimes not severe. We kept advancing very slowly; occasionally we would halt and skirmish along to find out where we were and what the enemy were doing, and then advance again. That was kept up all the day until in the afternoon when General Meade came back; we did not advance any more after that; we halted then and waited until it was time for us to retire—to go into camp where we were ordered to go; we then went back.

Byt. Brig. Gen. *W. P. Richardson*, in answer to telegraphic interrogatories sent him, has testified as follows:

MARIETTA, OHIO, *Oct.* 15, 1878.

A. BIRD GARDNER, *Recorder, Governor's Island, N. Y.:*

I was colonel and in command of the 25th O. V. I., 2d brigade, Schenck's division, Sigel's corps.

Came on the field the evening of the 28th. Halted on a hill on the south of the road (which I supposed to be the Warrenton pike), at a point east of, and in full view, looking westward, of the ground occupied by King's division during the engagement of that division and Jackson's force on that evening, all of which we saw. Laid there in position until daylight on the 29th.

Moved forward in line of battle, south of the road, early in the morning, slowly; passed over the ground fought on by King's division on the previous evening; saw a few of the dead and wounded. Passed this point about 1 p. m.

Proceeded until we came near the road at the foot of a high hill, on which was a rebel battery.

Supposed we were about to attempt to take it, as we were formed in close column by division. There was at this time a force belonging to our Army on our left and seemed to be crossing the road in front of us on our left.

Soon an artillery fire was opened on our left and rear, and we were withdrawn slowly over the ground we had traversed in the morning, to a narrow strip of timber, where we halted. This was perhaps 2 or half past 2 p. m.

The artillery fire on our left and front increased, and we were withdrawn further across the fields to a heavy piece of timber, where we halted and remained until evening, when we were still further withdrawn and placed (as I believe) on the north side of the road in reserve in the rear of our corps. Here we remained during the night and the greater part of the 30th.

The furtherest point westward from where we started on the morning of the 29th

reached by us on that day, was at the foot of the hill just described. Our own brigade was where I have stated; the 1st had crossed the road on our right.

I have not been on the ground since the battle, never was on it before, therefore will not say I know where the Lewis house was.

W. P. RICHARDSON.

Although this witness was not furnished with any map, the movements of his brigade, as narrated by him, can readily and with precision be followed on the map used in this proceeding.

1602 Maj. *George B. Fox*, then captain Seventy-fifth Ohio Volunteers, McLean's brigade, Schenck's division, Sigel's corps, called for government, testified as follows (Board's Record, p. 732):

Q. Where were you on the early morning of August 29, 1862?—A. We camped about, I should say, 200 or 300 yards from the Chinn house, as indicated on the map, the night previous—night of the 28th.

Q. And on the morning of the 29th did you move forward from that position; if so, at what time and in what direction?—A. I should say abought eight o'clock, perhaps nine, we commenced to advance through the woods.

Q. Will you please describe on the tracing all the events of the day within your knowledge?—A. I was there yesterday. About *this* point on *this* ridge [northeast of the Chinn house] we advanced down through these woods in line of battle—heavy woods—until we came to this ravine at Young's Branch. We adjusted our lines and went up through these woods, and came out on *this* open field [west of Lewis' lane No. 1], where we again adjusted our lines, expecting to find the enemy in *this* clump of woods. [Little fringe of woods south of the word Gainesville.] As soon as we reached this point we saw a charge made. It was over across *that* field and across *this* field; it was off to our right. It seemed to me as though it was a little further in the rear than *this*. I think it was north of the Dogan house. It was about *there* [peach grove] that charge was made northwest and was repulsed. We could see the enemy drive them back down the hill. After they were driven back we concluded to make an advance into these woods. [South of the word Gainesville.] I was in advance. The skirmish line halted in these woods; these are a narrow woods here. From that point we advanced by flank movement, with the right in front parallel with the road. [Gainesville and Centreville pike.] I think when we got into these woods, at this point, we deployed in line; the left came up and we deployed. We were lying along right in front, the left back along the pike; and I think when the right reached here—I am almost sure—it deployed in line of battle. [In the thick woods between the words Warrenton and Gainesville.] After going out of these woods some distance we discovered a great many dead and wounded, which we assisted in carrying off the field.

Q. Whose command did they belong to?—A. I do not know; but we heard firing there the evening before, and I suppose that the troops were killed and wounded at that time.

Q. Wounded troops?—A. Yes; said to be King's division, but I am not certain about that.

Q. Where did you go?—A. We remained there some little time. I advanced out so that I could see through *these* woods. [Trees to the west.] While out in there the Confederates opened their battery from about *this* position, I should judge, at an angle across the road, striking in the rear. [Battery to the west of the Douglass house.] Not many shots were fired; I do not think to exceed a dozen. That was as far as we advanced; and in looking down in this direction [southwest] there were some troops which did not belong to our brigade. I do not know what troops they were.

Q. Union troops?—A. Yes, sir.

Q. In what direction?—A. To our left; down *this* way.

Q. Diagonally to the left from the pike?—A. To the left, forward.

Q. Can you indicate the direction on the map?—A. I should say down in this direction [toward Cunliffe's].

Q. Then what did you do?—A. We fell back from this point; I think perhaps these troops moved back first, because I could not hear any firing that would indicate that they were driven back; there was no infantry firing at all. They moved back from some cause, I don't know what.

Q. At that point could you see any enemy?—A. No, sir; I could see no enemy; I saw none at all on that day on our immediate front.

Q. Then you fell back from these woods?—A. Fell back from those woods and remained there some little time—on the edge of the woods. Of course we were a little in advance as skirmishers. We had orders to be on the lookout and watch the column and rear, and move back if they moved back. I know we moved back following them until we got to these woods [little fringe of woods south of the word "Gainesville"].

Then we moved back again on Lewis' lane No. 1, where we remained probably three hours, and rested there.

Q. Did you see or know of any action going on that day; if so, what? State
1603 what you saw and what you heard that indicated such.—A. In our immediate front there was no fighting.

Q. You mean south of the pike?—A. Yes, to the left of the pike, toward Page Land lane; there was no firing from *this* direction [Page Land lane] that I know of; but there was some firing from *that* direction [from the pike northwest]. In the morning, when we advanced to this point [west of Lewis' lane No. 1], we saw a charge made by our line; the line had been moved out from these woods, and were in some position here behind a knoll [south of the school-house], up toward this position, held by the enemy [Independent line of the Manassas Gap Railway.] A terrible volley was fired at them and our troops fell back.

Q. What time of day was that?—A. That was the first charge; I suppose half-past nine or ten o'clock in the morning. We started from the Chinn house about eight, and it took us about an hour and a half or two hours to get to this house [Lewis' lane No. 1].

Q. What other evidence of an action did you witness?—A. After we fell back we saw two other charges later in the day over the same ground, exactly the same ground where we saw the fight in the morning; could see the men moving out away up in this direction later in the day [northwest of the school-house]. That firing and fighting continued throughout the day at intervals.

Q. What was the character of the contest that you witnessed?—A. It was a very hotly-contested contest; so much so that we felt we ought to have gone over there, and wanted to go over to their assistance when they drove our troops back. It was the intention of our general to move over there and help them if he could, but I think he had orders to hold them on the left; still, I don't know anything about it.

Q. How long during the day did the battle continue?—A. Throughout the day; not continually, but at intervals.

Q. Those intervals which you speak of, were they in the nature of assaults?—A. They were assaults on our part, none on the part of the enemy, except when our folks were repulsed they would drive them back from that hill.

Q. From the Independent Manassas Gap Railroad line?—A. Yes; it was from a hill up there.

Q. To how late an hour did that battle continue?—A. My recollection is that there was firing even after dark. I know that up to dusk in the evening, and I think after dark, there was firing over to the right.

* * * * * * *

Q. In going to the point where you encamped that night did you march along a road?—A. No, sir, across fields; that is, personally with my company.

Q. Was there any road in your immediate vicinity?—A. I think there was none that I saw; we had difficulty in advancing and moving along; the enemy were in our immediate front; there was a few cavalry.

Q. Did you cross any stream?—A. I know we crossed several small ravines—no stream of any consequence.

* * * * * * *

Q. About what time did you reach that?—A. I should say about twelve or half past twelve; we did not remain there long. [In fringe.]

Q. That was the farthest point to which you advanced?—A. Yes, sir.

Q. How long did you remain there?—A. Not very long; I think probably an hour, or not that.

Q. That would bring you to about what time?—A. Between twelve and one; then we fell back again to this fringe of woods gradually, not pressed back, but moved back very carefully.

Q. About what time?—A. Immediately.

Q. One o'clock?—A. About one o'clock.

Q. How long did you remain there in falling back?—A. We did not remain in this fringe of woods very long; just went and loitered through, and fell back to this position [back to Lewis' lane No. 1], where we remained for probably three or four hours.

Q. Up to what time?—A. I should say four or five o'clock.

Q. Then you fell back to what point?—A. Then we fell back on our camping ground; the men had nothing to eat all day long. I recollect a little controversy that occurred on the battle-field when the brigade was brought back. General Sigel rode up
1604 to General Schenck to know why he was moving back; he told him that the men had had nothing to eat all day long, and he thought it best to get back where they could make some coffee.

Q. What time did you get back?—A. About dusk; it was so you could not see a mile and a half away. I recollect in looking out in front we heard some firing on our right; when we got up on this knoll the firing became indistinct; we could not see it, but we could hear it.

* * * * * * *

Q. Do you know whether there were any troops to your left at all?—A. I do not. Do you mean in the morning?

Q. Yes.—A. I don't know in the morning.

Q. Were there any troops there in the afternoon?—A. Yes; to our left, when we were in this advanced position, we saw troops in *this* direction.

Q. Please indicate where you saw them?—A. Down our left, to these woods.

Q. How far?—A. Well, I would occasionally through the trees see—well, I don't suppose over 100 yards, if that far. It was wooded there.

Q. Can you, on that map, point out about where you saw those troops.—A. Right down in *these* woods, from "G. B. F." to "C. B." [Tracing so lettered.]

Q. State about the hour at which you say you saw those troops.—A. I should say it was between one and two o'clock.

Q. Did I understand you to say that there was no musketry firing south of the pike that morning?—A. I never heard a musketry shot fired all the day long to the left of the pike.

Q. Neither skirmish line nor anything else?—A. No, sir.

Q. Did you hear any artillery firing south of the pike that morning?—A. When we fell back the firing that I supposed to have been here might have been along the line, probably a little south of here, but my opinion was all day long that the most firing was north of the pike.

Q. And towards your front?—A. Yes, sir; one reason why I am pretty positive of it is that when we were in this wood [the Gibbon wood] I looked back over this field, and the angle of the shooting was right my way. I noticed from the firing of the shots that it would come close by.

Q. A northwesterly direction?—A. Yes, sir.

Q. What hour was it when you first saw that movement of Federal troops up against that Independent line of railway?—A. In the morning, when we first saw it.

Q. About what time?—A. I guess about eight or nine o'clock.

Q. How long did that last?—A. The charge, I suppose, occupied a space of fifteen or twenty minutes.

Q. Then did the troops fall back?—A. They did.

Q. When was the next one?—A. Think we saw four charges during the day. Whether we saw another one that morning before we came back I do not know, but my impression is that I saw a second charge before we advanced.

Q. You think you saw a second one before you made your advance from Lewis' lane No. 1?—A. Yes, sir.

Q. How long did it last?—A. About the same in character.

Q. Fifteen or twenty minutes?—A. Yes.

Q. When was the next one?—A. After we fell back in the afternoon, then for two or three hours we could hear them firing, and saw two or three charges in the afternoon.

Q. About what time was it in the afternoon?—A. Some time between three and five o'clock.

Q. Not earlier than three?—A. That is my recollection. Of course I took no notice of the time by a watch.

1605 Q. In other words, you saw two charges in the morning, and then you saw several in the afternoon?—A. I saw one or two in the morning; I know I saw one. The impression is very distinct, for we expected, of course, to go over and assist them, and that was the first notice that we had when we were out in front; so that the probabilities were that if they drove them any farther back we would come in and assist them; that is, I expected to.

* * * * * * *

Q. What is your estimate of the whole distance you advanced over that day?—A. Probably a mile and a quarter to a mile and a half.

Q. From the point where you camped the night before to the extreme advance?—A. Yes, sir.

Thus it will be perceived that General Schenck is corroborated by General McLean, by the report of Colonel Chesebrough, by the evidence of General Richardson, and by that of Major Fox, who was also in Brigadier-General McLean's brigade and commanded the skirmishers as they advanced. Major Fox was on the ground before he came to testify here and identified the position; so that while Charles Marshall, the former aid of Lee, was there to identify, we have a Union officer also to identify the points to which he advanced on the 29th August, and to which he did not get the next day.

Attention is next invited to the evidence of an important witness on the original trial, now deceased, viz, Brig. Gen. *John F. Reynolds*, who

was called by the accused, in 1862, and testified as follows (G. C. M. Record, p. 169):

* * * * * * *

Q. Please to state the position of your command on the 29th, in the afternoon, and the distance between your left and General Porter's command.—A. On the 29th I was on the left of General Sigel's command, engaged with the enemy, who was then wholly on the right of the Warrenton pike as we faced it. General Sigel moving up obliquely across the pike; I was on his extreme left. I had no knowledge of General Porter's position at that time, but I suppose that the nearest he must have been at any time was within two and a half or three miles, probably three miles, across this broken country.

By the JUDGE-ADVOCATE:

* * * * * * *

Q. Do you, or not, know where the enemy's right flank was on the afternoon of the 29th, say towards sunset?—A. *I was on the extreme left of our troops, facing the enemy, and their right, towards sunset, had been extended across the pike, with fresh troops coming down the Warrenton turnpike. But up to twelve or one o'clock it was not across the pike, and I had myself made an attack on their right with my division, but was obliged to change front to meet the enemy coming down the Warrenton pike.* I was forming my troops parallel to the pike, to attack the enemy's right, which was on the other side of the pike, but was obliged to change from front to rear on the right, to face the troops coming down the turnpike. *That was, I suppose, as late as one o'clock*, and they continued to come in there until they formed and extended across the turnpike.

Q. Will you now answer the question as to the probable effect upon the battle of an attack made about that hour on the right flank of the enemy by General Porter's command?—A. Supposing General Porter's command to have been on the road from Gainesville to Manassas Junction?

Q. Yes, sir.—A. A vigorous attack made there ought to have resulted favorably to our success; ought to have contributed greatly towards it, certainly.

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Q. Did you see any of the enemy's forces, on the 29th, on the south of the pike leading from Gainesville to Groveton, and do you not know that the right of the enemy's line rested on the north of that road?—A. Their line changed during the day. It was on the right up to twelve o'clock, or about that time. In the afternoon it was extended across the pike; I cannot state how far; the country was very wooded there, and I could not see how far across it was. *I thought at the time they were extending it that afternoon until dark.*

Q. You have stated that the country between your left and General Porter's
1606 position was a broken country. Will you look at the map which is on the table and designate at what point, in making that statement, you assumed the command of General Porter to have occupied at that time?—A. (Going to the map.) [Map used on trial in 1862.] This map is very inaccurate, and, as a military map, is not worth much, particularly this portion of it (indicating the portion referred to). My left was somewhere about here (indicating the place by the letter R), and I take it to be about two miles and a half in a straight line across to where General Porter was, as I understood it (pointing to place marked M. S.). If there had been no troops in his front I suppose he could have made the attack.

By the COURT:

* * * * * * *

Q. On the 29th of August did or did not the enemy's right outflank your left at any time?—A. I think it did towards evening. It was late, not dark, toward the dusk of the evening.

So Reynolds, even, did not believe that Longstreet was in force down in front of the petitioner's column during the day.

Q. Will you look at the map and point out the positions your division occupied on the 29th?—A. The division was maneuvering almost all the morning, and indeed the whole day in action on that day up to twelve o'clock, with what was supposed to be Jackson's forces, which were in there the day before. (The witness indicated upon the map several positions as occupied by his division during the day.)

Q. Did the enemy outflank you at sunset on the 29th?—A. My division, with a brigade of Sigel's corps, lost its connection for a time with the remainder of General Sigel's corps, but at sunset we had closed in to the right, so that the enemy, I think, did outflank us at sunset; that is, I think his flank extended beyond ours, although distant from us, not near enough to be engaged.

Q. Did the enemy that forced you to change front take position between your command and that of the accused on the 29th?—A. I think his position was partially

between myself and the position occupied by the accused as far as I can judge. I wish the court to remember, in all this testimony, that I had no knowledge at the time where General Porter was. *I knew that troops were over toward Manassas, and was expecting to have them brought up on my left.* I was informed that such would be the case; but they were not brought up there.

Q. Did you think that the force of the enemy, of which you have spoken, was large?—A. I thought it a pretty heavy force. I thought it amounted to about a division. It extended, apparently, as far as my division did.

Q. Did not the enemy, in attacking the left and rear of General Pope, on Saturday, the 30th of August, pass with artillery and infantry over much of the country that General Porter would have had to pass over on the 29th to attack the right of the Confederates?—A. I think not; I think he had gotten in, as it were, between that broken country and our position on that day, occupying a ridge which crossed the turnpike there, and having the broken country behind him. Because I maneuvered the day before, 29th, all over up to that broken country, and got partially on that ridge with one brigade.

* * * * * * *

Q. Do you know where the enemy commenced the movement of which you have spoken, to draw around General Pope's left flank?—A. I supposed it commenced about the time I changed front, on the afternoon of the 29th, between twelve and one o'clock; it may have been after one o'clock. I suppose that to have been the commencement of that movement; their re-enforcements were constantly coming up, and their line was extended accordingly; they commenced throwing troops out on Jackson's right as they came up, and extended their right out along the ridge.

If anything else was needed confirmatory of the gallant Reynolds, it will be found in his official reports, made at the time of these occurrences. They absolutely contradict the two Confederate witnesses, Marshall and Paine, introduced here by petitioner, and are as follows (Board's Record, p. 500).

1607 REPORT OF BRIGADIER-GENERAL JOHN F. REYNOLDS, COMMANDING DIVISION OF PENNSYLVANIA RESERVES, ATTACHED TO M'DOWELL'S CORPS.

HEADQUARTERS REYNOLDS' DIVISION,
Camp near Munson's Hill, Va., September 5, 1862.

* * * * * * *

General McDowell joined the command at daylight, and directed my co-operation with General Sigel.

The right of the enemy's position could be discerned upon the heights above Groveton, on the right of the pike. The division advanced over the ground to the heights above Groveton, crossed the pike, and Cooper's battery came gallantly into action on the same ridge on which the enemy's right was, supported by Meade's brigade. While pressing forward our extreme left across the pike, re-enforcements were sent for by General Sigel for the right of his line under General Milroy, now hardly pressed by the enemy, and a brigade was taken from Schenck's command on my right. The whole fire of the enemy was now concentrated on the extreme right of my division, and, unsupported there, the battery was obliged to retire with considerable loss, in both men and horses, and the division fell back to connect with Schenck.

Later in the day General Pope, arriving on the right from Centreville, renewed the attack on the enemy and drove him some distance. My division was directed to threaten the enemy's right and rear, which it proceeded to do under a heavy fire of artillery from the ridge to the left of the pike. Generals Seymour and Jackson led their brigades in advance; but notwithstanding all the steadiness and courage shown by the men, they were compelled to fall back before the heavy fire of artillery and musketry which met them both on the front and left flank, and the division resumed its original position. King's division engaged the enemy along the pike on our right, and the action was continued with it until dark by Meade's brigade.

List of brigades, regiments, and batteries in Reynolds' division as per his report of killed, wounded, and missing.

FIRST BRIGADE (Meade).

First Rifles, Colonel McNiel.
Third Infantry, Co onel Sickles.
Fourth Infantry, Colonel Magillon.
Seventh Infantry, Lieutenant-Colonel Henderson.
Eighth Infantry, Captain Lemon.

SECOND BRIGADE (Seymour).

First Infantry, Colonel Roberts.
Second Infantry, Colonel McCandless.
Fifth Infantry, Major Fentmyer.
Sixth Infantry, Colonel Sinclair.

THIRD BRIGADE (Jackson).

Ninth Infantry, Colonel Anderson.
Tenth Infantry, Colonel Kirk.
Eleventh Infantry, Lieutenant-Colonel Jackson.
Twelfth Infantry, Colonel Hardin.

ARTILLERY.

Battery C, Fifth Artillery, Captain Ransom.
Battery A, First Pennsylvania Artillery.
Battery B, First Pennsylvania Artillery.
Battery G, First Pennsylvania Artillery.

SUPPLEMENTAL REPORT OF BRIGADIER-GENERAL JOHN F. REYNOLDS.

HEADQUARTERS FIRST ARMY CORPS,
October 9, 1862.

GENERAL: I observe in the report by General Schenck's acting assistant adjutant-general, published in the Philadelphia Inquirer of to-day, of the operations of that general's division when General Sigel advanced to attack the enemy on the morning of the 29th of *August last* (you will yourself observe the error in the dates), several missta tements, unintentional no doubt, when referring to the movements of my division. My division maneuvered on his left from early in the morning until he gained the position alluded to on the pike near Gibbon's battle-ground of the evening previous. It was here that General Schenck asked me for a battery. *Cooper's battery, with Meade's brigade as a support, was immediately placed in position on the ridge to the right of the pike and on the left of the woods where Gibbon's brigade had been in action by General*
1608 *Meade and myself.* In returning from this position, to bring up the other battery and Seymour's brigade, I passed through Schenck's troops, drawn up on the *right* of the woods before alluded to, in which Gibbon had been engaged. But, in bringing up Ransom's battery and Seymour's brigade along the pike, I noticed that Schenck's troops had disappeared from this position and were nowhere in sight. I understood that Schenck had detached a brigade to the right to the support of Milroy, and that I was therefore left alone as far as I knew. I immediately arrested Seymour's movement, and directed the division to occupy the position across the pike from which it had moved, in doing which McLean's brigade was discovered occupying a piece of woods just on the left of the pike, and as soon as could be this movement was arrested and made to correspond with his position. It was subsequently ascertained that he was disconnected from the rest of Sigel's troops, and the position was again changed to make them correct.

I sent no word to General Schenck of the kind indicated in this paper of the movement of the enemy at the time this change of position was made, nor at any time. There was a report came later in the evening that the enemy were moving over the pike, but I am not aware that I communicated it to General Schenck, as at that time I had no connection with him.

I am, &c.,

JOHN F. REYNOLDS,
Brigadier-General Volunteers, Commanding.

Major-General MCDOWELL, *Washington, D. C.*

I make this correction to you, and without any desire to enter into a controversy in the paper on official matters.

J. F. R.

Thus we have fixed with a certainty which approaches the absolute that the Union forces were in and beyond that "Gibbon wood" as late as one o'clock, and held those positions as late, certainly, as three o'clock in the afternoon. No wonder, therefore, that Longstreet thought "it would be a little hazardous to make a front attack," and expressed to General Lee a doubt of being able to carry the position held by Generals Schenck, Stevens, and Reynolds, south of the pike, and, as Charles Marshall says, "for reasons satisfactory to himself [Longstreet], rather advised against it." (Board's Record, pp. 63 and 169.)

But there is still further evidence as to Reynolds' position.

Bvt. Maj. Gen. *H. G. Sickles*, United States Volunteers, called by government, testified as follows (Board's Record, p. 1096):

By the RECORDER:

Q. What position did you hold in the military service of the United States on the 29th of August, 1862?—A. I was colonel of the Third Regiment Pennsylvania Reserves, second brigade. I do not recollect what our division was. We returned from the Peninsula and rejoined our old corps.

Q. With what rank did you leave the service?—A. Brevet major-general.

Q. Whose corps?—A. General McDowell's.

Q. Who commanded your division?—A. General John F. Reynolds.

Q. Who commanded your brigade?—A. General George G. Meade.

Q. Do you know where your regiment was encamped on the morning of Friday, August 29, 1862, if it was encamped at all, or bivouacked?—A. I took it that, in looking over the map shown me here, it was near the Lewis house, on the battle-field.

Q. What did your brigade do that morning of August 29, 1862?—A. We broke camp about daylight, I think, and moved out to the front on the left of Sigel, I think.

Q. How long did you remain with the brigade?—A. It was probably eight o'clock, or nine, in the morning; eight, perhaps.

Q. When you left it?—A. Yes.

Q. You did not then remain with it the remainder of the day?—A. No, sir; I did not.

* * * * * * *

1609 Cross-examination by Mr. BULLITT:

Q. You say it was in the neighborhood of the Lewis house where your camp was; will you indicate on the map where it was?—A. I don't know that it was really the Lewis house; I judge from the location. I think that here is about the position (the Lewis-Leachman house) where we were massed that evening; but I am not very sure; I have such an indistinct knowledge of the ground, and was with the command so little, that it would be hardly fair to depend upon my testimony.

Q. You really do not recollect where it was?—A. No; I have not a distinct recollection; but I think that is the neighborhood, judging from that stream there. (Witness indicates the Lewis-Leachman house.) I saw a map upstairs which locates a stream of water which I am pretty sure I have a recollection of.

Q. May it not have been this stream (Chinn's Branch), or this (Young's Branch)?—A. I think it was not so far to the rear as that.

Q. Do you feel any certainty about it?—A. Of course I am not certain; but yet I am inclined to think it was here (Lewis-Leachman house).

* * * * * * *

By the RECORDER:

Q. Is there anything else in the neighborhood of that location that fixes it in your recollection?—A. On the previous evening, the 28th, I think, I recollect there was a battle took place, or a fight, between Gibbon's troops and the enemy near our front, and General Meade's brigade was ordered front. We advanced some distance, and formed on a hill where we could overlook the fighting. It was then about sunset. I think we remained there until dark, when the firing ceased; then we returned again to where the first and third brigades were in camp.

Maj. *William H. Hope*, Ninth Pennsylvania Reserves, Third Brigade, Reynolds' division, called by government, testified as follows (Board's Record, p. 931):

Q. Where was your regiment camped on the morning of the 29th of August, Friday?—A. We arrived on the morning of the 29th, about one o'clock, on the Bull Run battle-field.

Q. And encamped near or at what place?—A. Near Groveton, I think.

Q. Did you move out from that place after daylight?—A. We did.

Q. At about what time?—A. About daylight. We were ordered to the rear of General Sigel's troops to support him.

Q. Describe all your movements that day.—A. We were marching and countermarching nearly all day, until about between four and five o'clock in the afternoon; our brigade was ordered in to the extreme left to try to take a battery; we went down through a corn-field, and came to this dry ravine, and General Reynolds was there: he says, "General Jackson, you are too damned slow." The regiment, the right wing, passed around to the right, and the left wing passed to the left. I commanded the third company from the right, Company D; we got between the rebel battery and on a line with a battery and sharpshooters; Colonel Hardin, commanding the Twelfth Regiment, and the lieutenant-colonel of my regiment were talking together; the

sharpshooters opened on us. I was standing probably ten feet from Colonel Hardin when a ball cut the cord of his hat; it was a little too hot, and we could not return the fire. The sharpshooters were under cover; the battery had been supported by this time, and we could do nothing with it, and all about-faced and got away from there.

Q. That was about what time?—A. Half past five o'clock; probably a little later.

Q. Do you know where the Lewis house is?—A. I do.

Q. Were you at any time in the day in the vicinity of that house?—A. We passed that house, I think, where we went to try to capture a battery, rather in front and to the left of the Lewis house.

Q Off in the neighborhood of Britt's?—A. I don't know that I can locate it. I think probably the battery was nearly a mile from the Lewis house.

1610 Q. Can you indicate about where that battery was?—A. I cannot locate that battery on that map.

Q. It was a little to the left and front?—A. Yes, sir.

Q. How far forward did you get on that day, in reference to the position of the Lewis house?—A. About a mile from the Lewis house.

Q. Forward?—A. Yes.

Q. In which direction, west, northwest, or southwest?—A. Northwest.

* * * * * * *

Q. What time in the day did you first see the enemy?—A. About daylight.

Q. Where did you see them then?—A. To the left of Groveton.

Q. When you say to the left of Groveton, do you mean the north or south of it?

(The witness indicates on the tracing northwest of Groveton.)

Q. Did you see any fighting that day in that direction?—A. I know we were not particularly engaged; we were under fire, and some of them gave us a little railroad iron that day. We went in to take a battery, and when we came back they gave us some grapeshot in a corn-field.

Q. Did you hear any cannonading that day?—A. Yes, sir.

Q. Which direction?—Groveton.

Q. Did you hear any infantry firing?—A. Yes, sir.

Q. How long?—A. More or less all day. In the morning there was quite a sharp cannonading.

Q. Do you recollect the Lewis house, whether it was a one-story or two-story house?—A. A two-story house.

Q. Do you recollect distinctly being there that day?—A. Yes, sir.

By the PRESIDENT OF THE BOARD:

Q. What was the formation of this division during this day?—A. I do not know, only my own brigade.

Q. What was your formation?—A. The 9th, 10th, and 12th; we were on the extreme left.

Q. How were you formed—in line or in column?—A. I could not say as to the first and second brigades, how they were formed. Our brigade was formed in column of battalions.

Q. You did not see the formation of the other brigades?—A. No, sir.

Byt. Brig. Gen. *Charles Barnes*, United States Volunteers, then captain Ninth Pennsylvania Reserves, Third Brigade, Reynolds' division, called by government, testified as follows (Board's Record, p. 660):

Q. Where were you at daylight on the morning of August 29?—A. We were to the left of the Lewis house.

Q. From there where did you go?—A. From there we moved to the front, or between that and Groveton and the Lewis house, in a ravine to the left of the Lewis house.

Q. The Lewis house that is now called Leachman's?—A. The Lewis house was a two-story white frame house, one of the best in that section of country.

Q. At what time did you arrive at that point?—A. To the best of my recollection we arrived in the position that we lay, to the left of that house, about three o'clock in the morning.

Q. What were your movements from that position during the day?—A. We were on the extreme flank of General Pope's army, and we kept moving backwards and forwards from different points on the extreme left; my regiment was on the skirmish line a good part of the day, that is, we were kept flanking.

Q. Was there any contest going on that day; if so, what was the nature of it?—A. There was a heavy contest going on on our right all day, or nearly all day;

1611 there was heavy cannonading in the fore part of the day, and there was heavy artillery fire in the after part of the day on as late as dark.

Q. At how early a period in the day did that heavy infantry firing begin?—A. To

the best of my recollection there was some infantry firing in the fore part of the day, but the heavy infantry firing was, I should think, about three o'clock.

Q. How long did it continue?—A. It continued heavy at intervals until dark.

Q. Do you know of any infantry firing between, say, about twelve o'clock noon and three o'clock?—A. I cannot say that I do. There was some canonading.

Q. Can you indicate on the map the farthest point to the front that you got that day?—A. I believe I can.

Q. Is this house called the Leachman-Lewis house the one that you refer to? [Douglas Pope map shown to the witness.]—A. We were ordered late at night to charge up in this ravine with two brigades. [In the direction of J. W. Cunliffe's.]

Q. Will you mark it on the map?—A. As near as I can tell from this map I should think that was the ravine. [Marked C. B.] Just south of the word Cundiff.

Q. With reference to the point farthest in advance that you reached that day, do you know where the right of your brigade was located?—A. The right of our brigade was over near to Groveton, towards Groveton. Our brigade kept flanking backwards and forwards down in this direction and off in that direction, feeling for the enemy, as we were directed.

Q. From about twelve o'clock in the day where was your company?—A. About twelve o'clock we were resting in a piece of woods up near, I should think, in here somewhere. [In a piece of woods northwest of Britt's, marked No. 2 C. B.]

Q. And the farthest point you reached was where?—A. Where it is marked "C. B.," southeast of Cundiffe's. The enemy were firing off in this direction somewhere. [From Pageland lane towards Gainesville.]

Q. Indicate the direction in which the firing was.—A. I should think it was off in this direction somewhere. [Near to the railroad.] We were ordered to move up into a run, just a dry ravine. We moved up by the flank, three regiments. General Seymour was with us. As we got up near, I think, this piece of woods, we were ordered to halt. [Just west of the words "Meadowville lane."] General Reynolds came riding up to the rear of the column—we were moving by the left flank—and ordered Seymour to halt, that he was too late, and for us to move right back; he gave the order himself to about-face and march back. We marched back, and moved, I should think, down this ravine towards the Lewis house. [Following the line of the branch.]

Q. At the time that he ordered you to move back, did he state anything more?—A. He stated nothing more. He stated to General Seymour that he was too late; that the enemy were showing themselves off in this direction. [Beyond Pageland lane.] We could see their skirmish line coming in off in this direction; that would be to the right of where we were moving up.

Q. Put down with your pencil and mark it C. B. 3 where you noticed the enemy's skirmishers coming in.

(The witness does as directed.)

Q. What time of day was that?—A. At the time we made this movement up here it was as late as four o'clock. I recollect the time, because the sun was sinking in the west quite perceptibly.

Q. I understand you to say that you were on the left of General Reynolds' division?—A. On the left of General Reynolds' division, and my regiment did the flanking, or, rather, the skirmishing.

Q. When you say did flanking, what have you reference to?—A. In moving the brigade backwards and forwards to feel the enemy. Men were put to moving out in flank as feelers.

Q. Were you in that body?—A. Yes, sir.

Q. The right of the division rested over in the direction of the Warrenton pike?—A. In the direction of Groveton and the Warrenton pike.

Q. During that time where was the enemy, so far as you were concerned, from noon up to dusk?—A. The body seemed to be on the right, where the heavy firing was, north of the Warrenton pike, about Groveton.

1612 Q. Could you see the enemy during the day from twelve o'clock?—A. Not where we were, we couldn't see them. We were kept kind of down in the ravine a little.

* * * * * * *

Cross-examination by Mr. BULLITT:

Q. Will you locate on the map your position at three o'clock in the night or on the morning of the 29th?—A. I don't know that I can.

Q. As nearly as you can, about where were you at three o'clock?—A. That was the time when we got where we bivouacked.

Q. Indicate that as well as possible. [Douglas Pope map shown to witness.]—A. I don't know that I can indicate where we bivouacked that night.

Q. You can somewhere in the neighborhood?—A. It must have been off here. It is in this direction from the Lewis house.

Q. Give your recollection of about the locality; you arrived there about three o'clock?—A. Yes, sir.

Q. Now the point you arrived at where you bivouacked that morning and night?—A. It is pretty hard for me to state, but it was near the Lewis house.

Q. Which Lewis house?

(The witness indicates Leachman's.)

Q. It was near the Lewis house, which is west of Lewis lane No. 1. Now what time did you leave that point?—A. It was after daylight.

Q. How far did you march?—A. We marched a short distance in the first place, then we marched again, and we kept marching and remarching.

Q. Please show the point to which you marched when you first left there after daylight?—A. We marched direct, I should think, from the Lewis house up toward Groveton. We marched from where we were bivouacked to the direction of Groveton.

Q. Was it a northerly direction?—A. It was a northerly direction, if that map is correct.

Q. How near did you go to Groveton?—A. We went in sight of it. In the first place, you could see a long distance there at some of those points.

Q. You know where the Warrenton and Centreville pike is?—A. I do.

Q. Were you immediately south of that? Were you marched directly north toward that road, at right angles with it?—A. I don't know that we were marched at right angles, but in that direction toward Groveton.

Q. How near did you go to Groveton?—A. I suppose we were three-quarters of a mile.

Q. Groveton was in which direction from you?—A. Groveton was in a northerly direction. It was a little to our right.

* * * * * * *

Q. Which way did you march and which way did you countermarch? Give your movements as nearly as you can.—A. In marching up this ravine we marched off in this direction (toward Cunliffe's). In moving back, we moved back right down the ravine.

Q. In countermarching, did you at any time go east of the point at which you had bivouacked the night before?—A. I think not, to the best of my recollection.

Q. Then, during the whole day, according to your present recollection, you were west of what is marked on this map as Lewis lane No. 1?—A. Yes; that is the best of my recollection. At night we fell back and took position in here somewhere [north of Compton's barn].

* * * * * * *

Q. Did you see no enemy along about in the vicinity of what you have marked here as "C. B."?—A. There was an enemy up in here. [Towards Pageland lane.] We saw a few mounted skirmishers.

Q. You saw no heavy bodies of troops?—A. Had no heavy bodies of troops at that time until they commenced firing upon us from this position.

Q. Do you recollect having seen Owen Jones, of Pennsylvania, with his cav-
1613 alry, there?—A. I don't recollect seeing any Pennsylvania cavalry there. There were cavalry moving backwards and forwards.

Q. Now I ask you whether or not General Reynolds did not that day move into the woods in front of you with more than one brigade, and whether he was not driven out within fifteen minutes or half an hour afterwards?—A. He was not driven out. He ordered the troops out; they were not driven out.

Q. That was a wood?—A. That was up a dry ravine in an open field; there was a little woods to our left.

Q. Will you indicate where that woods was?—A. If this map is correct, I would suppose that is it; it is a small piece of wood. [West of the words "Meadowville lane."]

Q. You took a route along here, I suppose—you marched along that road? [Manassas and Sudley road.]—A. On the 28th we were moving along this road. [From Gainesville east along the Warrenton and Centreville pike.] One of our brigades was fired into, and the eighth regiment had several men killed.

Q. Then which way did you go?—A. Soon afterwards—after that the enemy left our front and we made a detour off towards Manassas.

Q. That is, you moved off towards the Manassas and Gainesville road on the Manassas Gap Railroad?—A. We moved off towards the Manassas Gap Railroad. I don't recollect that we crossed it; yet I am not positive but what we did cross it. Then we moved along to Manassas or near Manassas.

Q. What time did you leave there?—A. I cannot tell.

Q. About what time?—A. We came in here and halted.

Q. Came in where and halted?—A. Some point either on this side of the railroad or on that, I cannot tell which. We halted for an hour or two and then we moved off, and it was after dark when we passed Manassas; we marched on from Manassas; we seemed to just turn right up towards the Warrenton pike.

Q. Came up in this direction? [Along the Manassas and Sudley road.]—A. I suppose that is the road; from there we went up to this point that I indicated, where we bivouacked.

Q. How did you get to that point from the Manassas and Sudley road?—A. Across the country.

Q. Look at it there; did you march right across *here*?—A. I cannot tell; it was after night.

Q. You do not know how you got there?—A. I don't know how we got there, but I know we were at Manassas, and I know we marched that night during the night.

Q. Did you see the attack which was made late in the afternoon or evening by King's division?—A. I did not.

Q. Where were you at half-past five to six o'clock?—A. At half-past five or six, at the time that this charge was made up in here—I put this at a later date than some of my comrades—but at the time when we made this charge, or just before it, this heavy musketry firing was going on.

Q. Then about what time?—Q. While we were falling back there was heavy musketry firing.

Q. About what time would you say it was that you were there at "C. B."?—A. I should say that it was not earlier in the day than five o'clock.

Q. That is, the movement by which you were at "C. B." was not later than five o'clock on that day?—A. I should say that it was not later than five o'clock in the afternoon.

Q. Not earlier than that?—A. Not earlier than that.

Q. How long did you remain in that point?—A. Not ten minutes.

Q. Before you fell back to what point?—A. We flanked right around this ravine, I should think, and we halted there for a little while.

Q. That is the ravine right under "Lewis lane, No. 2"?—A. Yes.

Q. What I want to know is where you were at the time General Hatch's
1614 division and King's division, General Hatch in command, charged up the Warrenton pike.—A. The time the troops charged up there I cannot tell who commanded the troops. We were in *here*.

* * * * * * *

Q. Was there any heavy fighting along on the Warrenton pike just north of you?—A. There was to our right very heavy firing in the vicinity of Groveton.

This evidence, it is noticeable, corroborates General Reynolds' official report, before cited, of the 5th September, 1862, that *after* General Pope arrived on the field he proceeded, under the latter's orders, to threaten the enemy's right and rear "to the left of the pike," viz: to the north of it, and had a sharp contest.

It is a curious fact that Maj. G. B. Fox, of Schenck's division, and Brevet Brigadier-General Barnes, of the Pennsylvania Reserves, Reynolds' division, each put the lines that they marked on the map in exactly the same relative position, Reynolds having been on Schenck's left, near Meadowville lane, and one being a continuation of the other.

The opportunity here presented to an enterprising and vigorous officer was lost by this petitioner, for instead of pushing into action so as to communicate with the left of General Pope's army, he retired without any effort to carry out the specific orders for his march, *under which he was to halt only when he should have established communication with the forces on his right* (Pennsylvania Reserves), *which, as he knew, were ordered also to march toward Gainesville.*

As, however, from the sounds of battle, it was evident that they had met the enemy, communication could not, of course, be had by continuing in the direction of Gainesville on one side of the triangle, Gainesville forming the apex, but by pushing across to the other side on a more northerly road, parallel to the base of the assumed triangle.

While the petitioner was still at his furthest point of advance, with a portion of his troops, near Dawkins' Branch, General Reynolds was crossing the Warrenton turnpike and attacking Jackson's right.

There were two brigade fronts between Reynolds' division and Groveton, viz, Stahel's and McLean's, of Sigel's corps, and this shows how far his force must have extended on the general line of the turnpike toward Gainesville.

In his official report, General Reynolds says, as we have seen, that "Cooper's battery, with Meade's brigade as a support, was immediately

placed in position on the right of the pike and on the left [viz, west] of the woods where Gibbon's brigade had been in action" (*p. 72 official printed report*).

In his evidence on the general court-martial, General Reynolds said "*he supposes this to have been as late as one o'clock.*"

In Brig. Gen. R. C. Schenck's official report (p. 140, *ibid.*), it is stated that it was about one or two o'clock when General Reynolds' division was seen coming up on the left of McLean's brigade of Schenck's division.

It was the "left rear" of the force of General Reynolds (thus offered at an angle with our main line) that the Confederate reports speak of as attained by their artillery from the high ground west of Pageland lane in their advance from Gainesville.

From this we may consider what would have been the effect had petitioner moved up to establish communication with our left (Reynolds'), since the ground between them was necessarily entirely unoccupied by the enemy, and since the enemy's check to Reynold's attack of Jackson's right would have been counterchecked by petitioner's advance.

All these troops south of the Warrenton turnpike were rendered of comparatively little use, by reason of the petitioner's fatal inaction.

1615 As, according to General Schenck's report, Cooper's battery, after going into position (west of Gibbon's battle-ground) between one and two o'clock, was in action "about an hour" (p. 140, *ibid.*), it follows that the enemy could not have attacked and flanked Reynolds with artillery, even so as to have compelled his falling back, until about three o'clock.

When, therefore, it is sought by petitioner's counsel to place the Confederate line of Hood's division in the neighborhood of Gibbon's battle-ground and field-hospital at 10 a. m., we can only believe it by saying that what John F. Reynolds swore to, and Schenck (by his aide-de-camp) officially reported in September and October, 1862, was false, or else you must come to the conclusion that the Confederate sources of information were mistaken.

The field-hospital of our dead and wounded men of Gibbon's brigade has been too well fixed in evidence and too indelibly impressed on the minds of those who passed over the ground on the 29th August, 1862, and who have been witnesses, not to leave its impress. Nearly three hours is a great discrepancy, but as Reynolds' and Schenck's reports and the former's evidence were made and given when the subject was fresh in their recollection, such sources of information are entitled to great respect.

If the Confederates were anywhere near the position it is sought to place them, Reynolds would have been destroyed.

Leaving out of view the question of success or non-success of an attack on the enemy's right, and whether Jackson or Longstreet was there, it will not be questioned that an attack should be made as ordered, because even if it fails it may so employ troops of the enemy as to insure elsewhere against their line such success as to lead to victory.

The battle we are considering affords a striking illustration of this.

When Hood's advance (of Longstreet's command) had, towards the middle of the afternoon, rendered the stay of the two brigades in Jackson's right front in observation of Reynolds no longer a necessity, they were withdrawn and became a reserve greatly needed for Jackson's nearly-exhausted lines.

When General Kearney, at about six o'clock, rolled up the enemy's left upon his center, and Stevens, joining with Kearney, endeavored to

sweep their line still further and make the success decisive, it was Jubal Early's Confederate brigade, with the Eighth Louisiana of Hay's brigade, coming to the aid of A. P. Hill's exhausted troops, who had already, says Hill in his report, suffered "six distinct and separate assaults," that checked our advance and drove Stevens back.

Kearney's report says his own division "changed front to the left to sweep with a rush the first line of the enemy. This was most successful. The enemy rolled up on his own right. It presaged a victory for us all. Still our force was too light. The enemy brought up rapidly heavy reserves, so that our further progress was impeded. General Stevens came up gallantly in action to support us, but did not have the numbers."

These were the *last* reserves Jackson had upon the field. The other regiments of Hay's Confederate brigade had been put in some time previously on a similar necessity.

Second Lieutenant *John S. Hollingshead*, Ninth Pennsylvania Reserves, third brigade, Reynolds' division, called by government, testified as follows (Board's Record, p. 932):

Q. Where were you on the morning of that day—29th of August?—A. I could not scarcely tell; we were marching during the night, and we lay in an open field until daylight, then we commenced moving.

Q. Do you know where the Lewis house is?—A. No, sir; I could not say by
1616 name. All I know is that after we had been marching and countermarching during the day, and after going through a strip of woods into a ravine to charge a battery, we all fell back and got to a white house, and staid there part of the night; I don't know the name of the house. I have never been on the ground since that time.

Q. Was there any branch near that house—any stream?—A. The ravine that we went into was dry at that time; just past where our company halted, in sight of that battery, there was a swamp, then a clump of trees on the other side; part of our brigade got into the woods across the swamp; our company and two or three others were just on the edge of the knoll that the battery was placed on. General Seymour sat there on his horse, on the edge of the knoll, within ten feet of where I was standing, and while there General Reynolds rode up and says, "You are too late, too late, about face," and we all went out together as quick as we could get.

Q. You had been moving up this ravine?—A. When we moved up that ravine and crossed the corn-field, a battery was playing on us with grape and canister, and we got back there as fast as we could, and got behind a knoll in front. The battery played on us as we went across the corn-field, and when we got upon the knoll, we changed direction; then when we got past where that swamp is the battery changed direction again, and was firing at our men in the woods across the swamp. While we staid there in that position General Reynolds came up, and the words he said were to General Seymour.

Q. How far in advance of this house do you think you went up that ravine?—A. About a mile, to the best of my recollection.

Q. Do you know what direction that ravine took which you went up from this house?—A. The strip of woods that we went through—we had been marching and countermarching along the roads during the day, and then we went to the right through a strip of woods and through a corn-field at about right angles.

By reference to the map at the time, between 1 and 2 o'clock p. m., when General Reynolds, as he originally testified, was swinging his division by a right half-wheel across the "Warrenton" pike, near Meadowville lane, and west of the Gibbon wood, in order to attack Jackson's right, it will be perceived what an opportunity was presented to petitioner, had he been at the head of his column, to move up in the exact direction indicated by his early verbal and written orders from General Pope and personal direction from General McDowell.

The position of Reynolds' division at that time shows quite convincingly that the enemy could not have been in either position or force south of the pike, near enough to have offered any obstruction to a movement by petitioner to connect with the left wing of the "Army of Virginia."

Now with reference indirectly to the position that Maj. S. N. Benjamin,

then Second United States Artillery, fired at. The impression sought to be conveyed is, that he fired off in the direction of the "Browner-Douglass house" towards a battery placed down on the easterly slope of the hill, on that natural glacis. There is also a natural glacis from this highest point noted as "Stony Ridge," where Jackson had his artillery in position behind his line down towards the Warrenton pike. If we look at the position taken up by Major Benjamin and examine the contour lines and the respective heights, we find, for example, that, his position being on the southerly edge of the pike at the easterly corner of Groveton, the next height westerly at its highest northerly point is 20 feet above the point at which his battery was located as just mentioned; that ridge which crosses the pike west of Groveton, and which is 20 feet higher than the one on which Benjamin's battery was placed, has still another west of it and east of the "Gibbon" road, which also crosses the pike to a point still more northerly, and is also 20 feet higher, while the northerly edge of the "Gibbon" wood north of the pike is still more northerly on an elevation 200 feet high.

From this topographical description it is plain that he could not possibly have fired westerly down the pike, or towards the
1617 "Browner-Douglass" house, even had he so wished, on account of intermediate hills and "Gibbon" wood, but that his line of fire was northwesterly, in the direction of the word "Stony," which best fulfills his conditions as to distance (Board's Record, p. 613), besides which, we have seen by the evidence heretofore cited of Maj. B. S. White, inspector-general in the regular Confederate army, Jackson's artillery was behind his line on that very "Stony ridge."

This direction of Benjamin's artillery contest corresponds exactly with the government theory of the true situation; for had he been firing westerly down the pike (had the topography permitted), General Reynolds would never have been able to cross it west of the "Gibbon" wood at the time he swore in 1862 that he did, or march Seymour's brigade down it to join his division, which was at precisely the same time Benjamin swears he carried on his remarkably gallant artillery contest.

From the position which Reynolds reached westerly beyond the Gibbon wood between 1 and 2 p. m. of the 29th, and from the fact that the Confederate Capt. James Mitchell, First Virginia Volunteer (called by petitioner), the only witness from Kemper's division of Longstreet (which division has been put in line by petitioner south of the pike next to Hood's), swears he "saw no Federal troops at all that day" (Board's Record, p. 386), it is plain that the re-enforcing enemy under Lee, comprising part of Longstreet's command, that day occupied a *defensive* position only near enough to help Jackson if necessary.

I have now given the evidence of these Union witnesses as to the position they occupied up to a very late hour in the afternoon. If General Reynolds, as his official reports show and as he swears on the original trial of this petitioner, got up in this position on the pike beyond the Gibbon wood at a later hour than one o'clock on the 29th of August, 1862, remaining there a considerable time, and if that is corroborated, as we find it is, by the official report of Colonel Cheesebrough, Schenck's adjutant-general, and by Major-General Schenck himself, and by Major Fox, and by Brevet Brigadier-General Barnes, Major Hope, Lieutenant Hollingshead, and General McLean, besides the citizens Monroe and Carrico, Major White, and Rev. Mr. Landstreet, it is quite plain that Charles Marshall and Alex. D. Payne, the two rebel officers who were brought here by petitioner as witnesses, were mistaken as to that day's position of Longstreet, which they fixed as on the easterly edge of the Gibbon wood by 9.30 or 10 a. m.

FORTY-THIRD DAY.

WEST POINT, *January* 10, 1879—10 a. m.

The Board met pursuant to the foregoing order and adjournment. Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted with the consent of the petitioner.

The RECORDER said: Before proceeding with my argument this morning, I desire to make some remarks with reference to a map which has been put in illustration here by one of the counsel for the petitioner, headed, "Map of the battle-field of Manassas, giving the positions and movements of troops, August 29, 1862, from surveys made in
1618 June, 1878, by authority of the honorable Secretary of War, by Brevet Maj. Gen. G. K. Warren, and assisted by Capt. J. A. Judson and H. D. Gardner." In looking at it I notice this expression: "Positions of troops as given in testimony before the Army Board at West Point and laid down on maps by the witnesses and officers present on the field." Then reference is made to the "Federal" Army, by which I presume is intended to be meant the United States Army, and also to the Confederate army. This map omits the positions of troops as laid down by Major-General Schenck, Brigadier-General McLean, Brevet Brigadier-General Richardson, Major Fox, General Sickles, General Reynolds, Captain Hollingshead, General Barnes, Colonel Chesebrough's report, Lieutenant Colonel Smith, E. B. Brooks, Major Hope, and citizens Carrico and Munroe, and others. It appears to have been made by Capt. J. A. Judson himself, and this is what I have reference to:

1st. If made by Captain Judson, he being in government service under Maj. G. K. Warren, at Newport, with a view to influence this Board, then it is quite needless to say it was improper, especially as the representative of the government was not notified. If any one should be entitled to this official's services in making a map, it should be the government representative, to illustrate the government view of the case as presented here.

2d. On its face the map is calculated to deceive, from the language used, as to "positions of troops," &c., &c., followed by a list seemingly of *all* the witnesses who testified as to positions, omitting the large number of Union officers who testified to a different state of facts.

3d. If offered by counsel as merely "illustrative" of his argument, he distinctly disclaiming that it does not give the names of *all* the witnesses who testified on behalf of government, then it is apparent that the witness, Captain Judson, who assisted largely in the preparation of the maps used here "officially," has been actuated by a desire to do all he could to make a *prima facie* case at least for this petitioner, in order to influence this Board in its action.

4th. In either view of the matter, Captain Judson, having been a witness for petitioner, and at the same time assisting in the preparation of a large so-called official map last June for the Board and the government representative, is found actively engaged in locating on a map, for the purpose of electrotyping, the troops in positions claimed by the government representative to be false.*

*The allegations in the illustrative maps referred to were subsequently corrected.

4.30 P. M. ORDER.

We now come to the consideration of the 4.30 p. m. order, so called, which is found in the third specification of the first charge, and is the basis of the first specification, second charge, and is as follows:

That the accused, being in front of the enemy during the battle of Manassas on Friday, the 29th August, 1862, did receive the following lawful order:

"HEADQUARTERS IN THE FIELD, *August* 29—4.30 p. m.

"Major-General PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and if possible on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

"JOHN POPE,
"*Major-General Commanding.*"

1619 The petitioner denies that he received this order at 5, or even 5.30 p. m., or until on or about sunset, when he was at his headquarters at the junction of the Gainesville and Sudley Ford roads, east of Bethlehem Church (petitioner's opening statement, p. 40), and on the original trial brought several witnesses to this point. He has produced no new evidence upon the subject. He has, however, brought witnesses (Leachman and Payne) to *guess* a road by which the order could have been carried.

As somewhat illustrative of this subject, it will be curious to note the evidence of the petitioner's then aide-de-camp, Lieut. S. M. Weld, as given in the original trial (G. C. M. Record, p. 129).

It seems that he was sent by the petitioner with a message to be delivered either to General McDowell or *General King*, both verbal and written, and that he started about four o'clock in the afternoon of the 29th from the junction of the road that leads from Gainesville to Manassas Junction and the road that leads to Sudley Springs. The purport of this message was that General Morell would now be strongly engaged; that there was a large force in front of us; that large clouds of dust were seen there, &c.

He says that on the road he saw General Hatch, who told him that General King was sick and *not there*, and that he, General Hatch, commanded his division; a fact, by the way, which, as we have seen, the petitioner himself knew beyond peradventure as early as ten o'clock in the morning. He says that General Hatch gave him a message to the petitioner to the effect that we had driven the enemy into the woods, which he sent to the petitioner by an orderly. This was after "quite a heavy fire of musketry broke out to our right and front." He then went in the direction indicated in order to deliver the message to General McDowell, and found him just leaving General Pope. He delivered the dispatch, and General McDowell said he was not the man, and pointed to General Pope. He says that General Pope told him to tell the petitioner "that we are having a hard fight"; that he overheard General Pope tell General McDowell to send one of his divisions to the right, to which General McDowell made some objection. He, Weld, then left General Pope, went down the road, and waited about five minutes; wrote the substance of the message, and sent it by an orderly to the petitioner. He met the orderly on his way back, who told him he could not find the petitioner, and he delivered it himself. He says he got back about sundown, and that he did not see Capt. Douglas Pope until then. He says he occupied at least an hour and a half returning, hav-

ing come back by a *different* road from that on which he went. He did not go to where he had left the petitioner, because he understood from the petitioner that the latter would be up at the front, and therefore he went to the front, having come out into the Manassas and Gainesville road near Bethlehem Church.

Of course, he did not find the petitioner at the front, because, as we have seen, during the course of the evidence for that day, that was not the place that the petitioner frequented. However, Lieutenant Weld went on up to the front, and then came back. He says he found the petitioner where he left him, right in the forks of the two roads—the Sudley Springs and the Manassas and Gainesville roads.

This message which he delivered to General Pope, with all the delay of going to find King's division, conversing with General Hatch, afterwards receiving a different message from him from the one mentioned colloquially, writing it out and then going to find General McDowell on Buck Hill with General Pope, took him, according to his own evidence, about an hour.

Therefore, at that time the distance from General Pope's head-
1620 quarters on Buck Hill to where the petitioner was located was not, according to his own witness and aid, more than an hour; and it must be recollected that the message which he gave his aid to carry to General McDowell was not one of urgency, requiring anything specially or immediately to be done on the part of General McDowell; it was in the nature of a report to General McDowell, and shows that he conceived himself to be operating still under the orders and instructions which General McDowell had given him upon leaving him near the Manassas Gap Railroad.

If it took the petitioner's aid but an hour to go to General McDowell at Buck Hill (General Pope's headquarters), even including all these delays *en route* of which I have spoken, it certainly could not have taken a longer time for an officer starting half an hour later from Buck Hill with an urgent message to go to the petitioner.

In considering this subject as to the delivery of this order, we must consider the character of the message which Captain Pope was to take to the petitioner.

There was a battle progressing at the time, heavy infantry and artillery firing, assaults being made upon the enemy's lines; and all this was spread out and under the notice of the commanding general and his staff. Captain Pope himself had shortly before, according to his own statement, been in a position where he witnessed directly some of the serious portions of the contest. The order which Captain Pope received was of an urgent character. It was for the petitioner to move at once to attack the *enemy's* right flank and, if possible, his rear. No description of order which could be given on the battle-field would indicate the necessity of greater speed and haste in his delivery than this. Is it to be assumed therefore, for a moment, that Captain Pope, after receiving such a message, should trot or walk as if on an excursion of mere pleasure to view the scenery? There is every reason to suppose, aside from the evidence of the witnesses on the subject, that Captain Pope rode with that message with all the haste and speed that was possible.

We have seen from the evidence and reports of both Sigel and Reynolds on the left of General Pope's line of operations, that they had been informed and were looking for the arrival of the petitioner upon their left to take part in the action; and the Hon. *E. D. Fowler*, who then commanded the Fourteenth Brooklyn Regiment in Hatch's brigade, King's division, has said (Board's Record, p. 548) that his brigade got into posi-

tion to support Reynolds west of the Sudley Springs road after having left the Manassas and Gainesville road, about 2 p. m., and that he was "very anxious, and expected, even before we halted, to hear, on what was our front and left, the guns of Porter's division."

General McDowell testified on the original trial (G. C. M. Record, p. 85, and Board's Record, p. 818) that he met Captain Pope when carrying this order near the Manassas and Sudley road, and that his troops were on the Sudley road. Some of them, however, had been put in, as he himself says, and as other testimony has corroborated, west of the Sudley road between New Market and the stone house, to co-operate with General Reynolds.

At the time, therefore, that General McDowell met Captain Pope, it is quite apparent that the latter could not have strayed from the road in the direction that the petitioner would put him in order to show that he lost his way.

It is to be noticed in looking at the map prepared by Major Warren that the road which the government witnesses unite in saying they took on the afternoon of the 29th of August is not fully delineated. For a part of the distance along Chinn's Branch, between two roads
1621 running northeasterly from the Chinn house, to the point where they cross the branch, is delineated a path which, so far as the map is concerned, stops at the most southerly of those two roads without any apparent reason.

The witness *Leachman*, and others, have testified to the presence in that country, in camp the previous year, of a Confederate army, and that the country was full of army roads.

The time of the dispatch of the order is fixed by its date, namely, 4.30 p. m. Three witnesses have testified as to the road that was taken, and their evidence as to a part of the road is substantiated by that of Major-General McDowell.

When we come to look into the testimony of Mr. *W. B. Wheeler*, a citizen, who lives on the line of the road which Captain Pope and the orderly, Mr. Duffee, testified as to taking, we find that there was formerly, at the time which we are considering, an army road in that very direction testified to by those witnesses.

As a slight corroborative circumstance it is to be noted that when these two witnesses, Captain Pope and Orderly Duffee, at my request, visited the battle-ground before coming in the presence of the Board to testify, after leaving Buck Hill, General Pope's former headquarters, they moved down the line of the Manassas and Sudley road towards Manassas Junction the entire distance in a light wagon, without personally examining the road that ran up by Chinn's Branch around the spring, and so on to Wheeler's and out by Smith's on to the Manassas and Sudley road. Nevertheless, they distinctly delineated upon the map the general direction that they were confident they had taken on the afternoon of the 29th in delivering that order, a direction which, as we shall see, has since been corroborated by Mr. Wheeler, in placing a road on the general line which they thought they had taken, and which they indicated from memory dating back sixteen years. The testimony of William B. Wheeler on that subject is as follows:

Q. Please look at this map. [Douglass Pope map shown witness.] Tell me what ways there were at that time, on the 29th of August, 1862, of going by roads from Buck Hill down to Bethlehem Church.—A. There was an opportunity of going any way that a person thought proper to go. There were no obstructions to any party not in a vehicle of going any way they thought proper to go. On some part of the route they would encounter woodland, and would evade it. The country was all open. There was no fencing there except my own outside fencing. If they went on the west

side of what is known with us as the Manassas and Sudley road, or, in other words, the road leading from Manassas to Sudley, there was no fencing whatever except my own outside fence.

Q. Will you please point out and describe any road there was, if there was one, leading down west of the Manassas and Sudley road, and the nearest to it in the direction of Bethlehem Church?—A. There was no road at all that was known as a road except the one from Groveton, which crossed the old Warrenton and Alexandria road [Lewis lane No. 1]. But the whole country was a road where any and every person thought of traveling. There was particularly from Mr. F. M. Lewis's, as laid down here, through B. F. Lewis's, and through Mr. Steers's to my own place (the Wheeler place) into the Chinn farm—there was a road that was mostly traveled by soldiers in passing from Manassas to what was then known as the Bull Run battle-field. During the spring of 1862 there was a great many that walked from Manassas up there, and while they were encamped at Manassas, an every-day occurrence.

* * * * * * *

Q. Was there any road leading down in the neighborhood of Chinn's Branch? If so, will you give its general direction on the map?—A. *There was a spring on the west side of that branch;* that is, *cleared land; on the west side of that branch there was a road,* or cattle-path; the whole country was open, and everybody's cattle, whose cattle wished to go over that, passed down on the west side of the branch until they made a path or road to the lower point of those woods, not including that small woodland that runs down there [just east of the branch]. *There was formerly a road, when Mr.*
1622 *Hoe owned that Chinn farm, that was on the outside of that woodland, down to that point, and cattle and stock of all kinds passed on this west side because there are bluffs on the east side.*

Q. How would they get out from this Chinn's Branch, from this lower point of that piece of woodland to Bethlehem Church?—A. *They could come through by my house,* or they could leave at the spring. It is in a small oak grove laid down on that map (on the branch). Mr. Chinn used as an inlet and outlet from his dwelling a road crossing that branch road.

Q. Was there any way of getting out from that point to the Manassas and Sudley road, except by going due east on the Chinn road?—A. Yes; as I just remarked, they could go where they pleased. The country was entirely open. As far as I know, most of the cavalry that was stationed at Manassas and vicinity passed through my place, sometimes out down here at New Market, and sometimes through Mr. Steers's, and into the road. They went any way they thought proper, that their inclination leaned.

Q. Was there any road at that time between your house and the Sudley road running from that point up here, that you have alluded to?—A. No, sir; there was no road. Persons riding about over the battle-field for the first time frequently rode through my field.

Q. Was there any old ruined house in that vicinity?—A. There was a tenant house on the Chinn farm, in a northeasterly direction from the residence, standing near a large cherry-tree in a northeasterly direction, but rather nearer the spring branch.

Q. About where would you say that ruined tenement was?—A. If I knew the scale of this map, I could locate it. [The scale of the map stated to the witness.] I should say that that tenant house was within a hundred yards northeast of the Chinn house—somewhat nearer—40 or 50, I suppose, nearer to the spring branch. It was totally destroyed, except the heavy frame.

Q. How far from the branch then was it?—A. I should think 80 to 100 yards, probably not quite a hundred yards, from the branch. It was northeasterly, in the direction of the stone house, and pretty much in the same direction as the branch.

The petitioner's witness, *John T. Leachman*, another resident of that region, who was called in order to *guess* at a route which Captain Pope took in delivering the order, nevertheless made some curious admissions corroborative of the evidence of the government witnesses.

In taking a route which he pretended Captain Pope might possibly have taken, a very difficult piece of road much to the west of where Captain Pope came out, and near Gaskins'; and yet, as will be perceived by a reference to the evidence that he gave, from which extracts will be made, he admits, although he is an elderly man, to have ridden at the rate of about six miles an hour, including this rough piece of country over which Captain Pope never went, and which he included in his estimate of the general rapidity with which he traveled; and he was making this estimate at the time specially for his own use as a witness in this case. This witness, without knowing anything about the exact

direction that Captain Pope took, and although making him start from the Matthews house, a point much farther north than Buck Hill from whence he (Pope) actually started, and although assuming that after he crossed the Warrenton and Centreville pike he (Pope) took a route via the Chinn house, much to the west of the road he actually took, so as to have brought him down via Compton's lane to the old Warrenton, Alexandria, and Washington road, thence out to New Market and so on down the Manassas and Sudley road and around up the Manassas and Gainesville road to Bethlehem Church, five-eighths of a mile farther than the headquarters of the petitioner, nevertheless, the witness Leachman was satisfied that Captain Pope did come out on the old Warrenton and Alexandria road. In this he was correct. We take up his evidence at that point and find that he testified as follows:

He evidently struck this road somewhere.

Q. Which road?—A. The old Alexandria road.

1623 Q. Why do you say that he evidently struck that?—A. Because he says he came out around a farm-house.

Q. That is on the Sudley Springs road?—A. Sudley Springs road.

Q. Where is that house?—A. That is at Smith's; he could not have come out around any other house to have done it. That house at that time presented a dilapidated appearance. It had a basement to it, but the wall was very much cut to pieces. It has since been repaired. The chimneys were very much to pieces.

Q. That is the house you suppose he means to designate when he says, "In coming up to this farm-house we struck the road, and went right straight out to where we found General Porter"?—A. Yes, that is the point where he struck the Sudley Springs road.

Q. Is that the only house that answers to that description, or that did answer to it at that time?—A. That is the only house, and I will give you my reasons for supposing that he came out on that road.

* * * * * * *

Q. From there to Bethlehem Church, of course, it is a perfectly open road, no trouble in finding the way?—A. None at all; it is a broad open road.

Q. Taking the route which you supposed him to have traveled, what is the character of the road or roads, or what was it at that time for horses?—A. From this point up here until he struck the valley of Young's Branch, I suppose the traveling was very good. There he struck rising ground, running up towards the Chinn house, but not enough to obstruct a horseman but very little, if he came out at Gaskins' until he struck that road.

* * * * * * *

Q. Taking the road as a whole, was it a road over which a man on horseback ordinarily could make a rapid ride, or would it be a moderate ride?—A. We rode at the rate of about six miles an hour, and I think it was about as fast as any prudent man would ride over such a road. I was well acquainted with the road and knew in what direction to guide my horse, where to make time and where not to make time.

* * * * * * *

Opposite Wheeler's house the road is comparatively smooth, and you could travel very rapidly over it with a very good degree of safety.

Q. In passing from the junction of the old Alexandria road with the Sudley Springs road down to opposite F. M. Lewis', how rapidly could a man ride with safety and expediency?—A. I don't mean to be understood that there are not spots, say of 100 yards, on that road that a man could ride at a brisk gait; but, as a general thing, I wouldn't like to ride over five miles an hour on that road.

Q. Supposing you had a safe horse; with that sort of a horse you say that five miles an hour would be the most rapid gait at which you would be willing to ride?—A. Yes, it certainly is. There are young men with less prudence than I now possess who might go faster.

* * * * * * *

Q. I believe at that time it was very dry.—A. My recollection is that it was very dry and dusty.

* * * * * * *

Q. Please say, from the experience you have had, and the knowledge of that road, how long, in your judgment, would it take a rider upon a good horse, riding as rapidly as a man ought to do who is going upon a somewhat urgent mission—how long would it take them, traveling with prudence and proper regard for the safety of his horse and himself, and only so much as that—how long, in your judgment, would it take him to ride over that road?—A. Assuming that the rider took the route that I have indicated here?

Q. I mean from the Matthew house to Bethlehem Church.—A. Yes. I don't think it could be done under an hour and a half. I wouldn't like to do it in less time.

* * * * * * *

Q. Will you please indicate on that map any house lying between the Warrenton pike and the Bethlehem Church, east of the line at Compton's lane—any wells at any of those houses?—A. I will. Coming down this road [the Manassas and Sudley road] in the direction of Manassas, Wheeler's is the first well; Gaskins has a well. We pass on to Smith's, and he has a well between his house and the road. We pass on down to F. M. Lewis', and he has a well. These are all that there is anywhere
1624 in that whole country between the Manassas and Sudley road and the Manassas and Gainesville road, except at my house.

Q. I understood you to say that all the fences were down?—A. The fences were all down pretty much all through that section of country at that time, and had been since 1861.

Q. Were there any neighborhood roads running along within half a mile or a mile to the eastward of the Sudley Springs road and down in a southerly direction?—A. I don't think I can answer that question, for even the fields were roads then. People went where they pleased. If they could cut off a corner by going across a field they would do it, and if many of them went along it would make something of a road, I suppose.

* * * * * * *

Q. I understand you to say the country was all open?—A. Yes.

Q. Neighborhood roads there?—A. Yes; I presume neighborhood roads there.

Q. And that many of them were paths made by people going across that you don't recollect now?—A. I cannot speak of the number of roads there at all; as I stated before, the country was all open and people traveled where they pleased.

* * * * * * *

It will be seen that, upon his own assumption of the road which Captain Pope took (which assumption was not correct, and which included much difficult ground), he estimated an hour and a half as the time for the delivery of the order, which would have brought it up to about six o'clock. According to petitioner in one of his closing arguments here, 6.30 p. m. was *some time before dark.*

In the delivery of an urgent order, which required speed, it is hardly to be expected that the officer delivering it would bring his horse down below its greatest ability to get over the ground rapidly unless some serious obstacle intervened.

The evidence of the three witnesses, Captain Pope and the two orderlies, Duffee and Dyer, shows that they found the petitioner's headquarters exactly at the point where the petitioner himself located it, namely, at the forks of the two roads. The general route, which has been indicated with much particularity by the three witnesses, was from the southerly side of Buck Hill below the line of the trees, across the Manassas and Sudley road and Young's Branch at the ford there, then down on the easterly side of Chinn's Branch to the place marked as a ford on the map, then down on the westerly side of that branch, on the road indicated partially by the map and wholly by Mr. Wheeler, to the spring east of the Chinn house, thence directly down between Mr. Wheeler's house and barn to the old Warrenton, Alexandria and Washington road, thence easterly by a road across lots between Smith's house and his well, which then existed, and the location of which is still plainly to be seen; so on down the Manassas and Sudley road until near its junction with the Manassas and Gainesville road, nearly; obliquing to the right in the woods there delineated they found the petitioner's headquarters at the very point he himself placed them. That road measures a little short of five miles.

In the evidence as given by these three witnesses there are found some slight discrepancies; as, for example, the witness Dyer, who, while at petitioner's headquarters, noticed Bethlehem Church, and has an idea that there was a spire upon it, though, singularly enough, *all* the wit-

nesses who were on the Manassas and Gainesville dirt-road appear to have recollected Bethlehem Church.

The last two witnesses produced by the petitioner here at the close of the case were called for the purpose of showing that the walls had fallen, and that it was an undistinguishable mass of ruins before this August campaign of 1862. This hardly seems to be borne out, for the
1625 reason that so many witnesses have testified to the position of the church, and to the fact of its being impressed upon their recollection by passing by it. As it was but a small structure, if the walls had fallen in and it had become a mere mass of bricks and rubbish, no one would have known but that it was merely the ruins of a dwelling. While, on the other hand, a number of witnesses distinctly recollect the fact of a church being there, or the ruins of one. It is reasonable to suppose that Messrs. *Wheeler* and *Leachman*, in placing the falling of the entire structure as in the spring of 1862, were mistaken. Possibly the roof fell in; possibly even two of the walls; but the remaining brick walls, if standing, would have indicated the presence of a church, not a dwelling.

There were also some discrepancies in recollection as to the road they took back beyond New Market. That is explained by Mr. Dyer, that they cut across from Smith's until they struck the road they had come down on around the Chinn Branch Spring. Captain Pope said that he went to the Henry House hill on his way back to General Pope's headquarters, and saw General McDowell. His recollection is different from that of Mr. Dyer. However, it may be that Captain Pope himself went to that hill, as he says, and left the orderlies to return to headquarters. If their evidence agreed after the lapse of sixteen years in all these minor particulars, there would, according to the text-books on evidence, be a greater cause for suspicion than if they diverged.

The general route which they took has been positively identified by all three, corroborated by General McDowell, and shown by Wheeler, the petitioner's witness, not only to have been possible but probable; with the additional verification that without such a road being delineated on this map, and without Captain Pope and Mr. Duffee going down that road themselves before coming here, they, nevertheless, put a road exactly where the subsequent witness, Wheeler, says that there was such a road. It is also in evidence by them that they did not go up on the old Warrenton and Alexandria road into the vicinity of his house.

These corroborative circumstances become of great value in determining the fact as to the route actually taken by Captain Pope and the orderlies, particularly after the severe and unusual cross-examination to which they were subjected by such skillful counsel as represent the petitioner here. The corroborative evidence of General McDowell is peculiarly valuable, given as it was upon the original trial, when his recollection was fresh, as well as before this Board, for the reason that it gives a motive for the change of direction taken by Captain Pope in order to deliver that order.

General Pope, or Colonel Ruggles, his chief of staff, had an idea that the petitioner was to be found much farther up on the Manassas and Gainseville road than the point at which he chose to locate himself. Therefore, as Mr. Dyer has said, Colonel Ruggles indicated the general line of Bristoe Station as the direction which Captain Pope should pursue in order to strike the Manassas and Gainesville road in the vicinity of the petitioner's force. That direction would have carried Captain Pope directly through Five Forks.

When the individual named Collins induced Mr. Duffee to go from his home up to Columbus in order to get some sort of testimony out of

him—for what purpose I do not know—Mr. Duffee thought at the time, in looking at that map, that the road which he had taken was in the direction through Five Forks, until he went down to the ground. (Board's Record, p. 623.) The fact that he rode up this road by Chinn's Branch in a southwesterly direction shows that his line of travel had
1626 been indicated by the proper authority, even if the evidence of the witnesses did not state it.

General McDowell was of course apprised of the road on which petitioner was acting (G. C. M. Record, p. 32), and appears to have indicated to Captain Pope the most convenient route by which to reach him (G. C. M. Record, p. 208), as appears by the evidence in the original trial. This is the explanation why Captain Pope did not keep right on down in the direction the petitioner would have him go. General McDowell even offered to send a guide with Captain Pope, but the orderly, Mr. Duffee, was familiar with those roads, and said that it was not necessary; and Captain Pope (G. C. M. Record, p. 62) relied upon his knowledge of the country. Therefore, at the first point where the road obliqued to the left in the direction that they were going, they came out down by Wheeler's and so on to the Sudley road.

In determining the value to be given to the evidence of witnesses it often is desirable to consider the character of the persons who give the evidence.

In the first place, as to Captain Pope, the evidence shows him to have been an officer in the Regular Army for some years, and to be at present occupying a responsible position under the United States circuit judge for the eighth circuit. The orderlies who accompanied Captain Pope on that day belonged to a detachment of the First Ohio Cavalry, which was doing that duty under Lieut. Col. T. C. H. Smith, their commanding officer, at Major-General Pope's headquarters. These men had been neither bounty-jumpers, conscripts, nor mendicants, but farmers and farmers' sons, who had entered the service from patriotic motives, and who evidently were of the most reliable character, or they would not have been selected for the special duty as messengers and orderlies at headquarters. We find, incidentally, in the record that all these men owned the horses that they rode; and it is reasonable to suppose, therefore, that they were much better mounted than the ordinary cavalrymen. It is to be noticed that both Mr. Duffee and the newly-discovered witness, Mr. Dyer, place the time of the delivery of that order at less, in their judgment, than an hour.

Mr. Dyer, it appears, is a farmer; he had no watch, and has never been in the habit of carrying a watch, but has been always accustomed to note the lapse of time by the position of the sun. With a practical experience of this description, and without knowing the time at which the order was dated, he placed it, in his judgment, as not later than half-past four, and said that it took about three-quarters of an hour to deliver that order, and that he judged of the time by having noted the position of the sun at the time they started, and the position of the sun at the time the order was delivered. The effort on the part of the petitioner, through his counsel, to make this witness state the degree of rapidity with which they traveled on the different parts of the road when *en route* to deliver the order was an effort to induce the witness to say that which it would be quite impossible for any one to say, unless he made particular note and memorandum at the time of the localities between which he traveled and the rate of speed at which he traveled between certain points. Possibly as accurate a mode of computing the time taken in the delivery of that order as could be given was that testified to by Mr.

Dyer, whose recollection of the length of the journey is fortified by actual measurement, and shows quite conclusively that he is an accurate observer both of time and distance.

To every person who is in the habit of judging time as he was, every object which casts a shadow is a sun-dial to note the progress of the day.

1627 *Solomon Thomas*, a government witness (Board's Record, p. 841), says that an officer came riding from the Manassas Junction way, having a dispatch, which he gave to the petitioner; that at the time his brigade was moving to the rear; that they were ordered to face about and move again up to the Manassas and Gainesville road; and that the time of the delivery of this dispatch, *judging from the position of the sun*, was somewhere from five to half past five o'clock. The recollection of this witness is that the petitioner was mounted, and that he dismounted and sat down by the roadside. The fact of the delivery of the dispatch, which he says was delivered at that time, is the prominent point in the recollection of the witness, because it is connected with the order which he received to face about and move back towards the front.

On the original trial it was sought to be shown that the hour of the arrival of Captain Pope was near sunset. The chief of staff of the petitioner, however, Lieut. Col. *Federick T. Locke*, on the original trial (G. C. M. Record, p. 139) said as follows:

> Q. How much time elapsed between the departure of General McDowell and the arrival of the order of General Pope to attack the enemy; and what were the accused and his command doing during that time?—A. I cannot say exactly as to the lapse of time; but during that time General Morell's troops were in position, and our artillery were engaging some artillery of the enemy, and there was some musketry firing also.
>
> Q. State approximately the length of time that you think elapsed between the departure of General McDowell and the receipt of that order.—A. I should think three hours.

* * * * * * *

General *Patrick*, one of petitioner's witnesses (Board's Record, p. 189), said that General McDowell got back from the front of petitioner's column at about half past twelve to one o'clock, and ordered him to halt, and countermarched him, and then immediately led his brigade through a wood road directly across the country, until it eventually came into the Sudley Springs road. The evidence, however, of petitioner's chief of staff as to the *time* of the receipt of the 4.30 order, although vague, certainly shows that it was received, according to *his* recollection, during the *afternoon*, when the sun was high, and not at or about sunset.

Despite the witnesses produced by the accused on his behalf on the trial, the court convicted of the charges based upon this 4.30 order.

It is to be noticed that that order from General Pope did not state that he was to attack *Jackson's* flank; but merely the *enemy's* right flank, which, according to some statements, particularly his own, was in front of him; though, according to Col. E. G. Marshall, Thirteenth New York Volunteers, on skirmish line—not more than a brigade. Jackson's name was not mentioned. General Pope afterwards expressed his opinion on the subject in his evidence, and also said that it was his belief at the time that the road on which petitioner's command was in column would have conducted "him either to the right flank of the enemy or past the right flank of the enemy, towards his rear." (G. C. M. Record, pp. 33, 34.) *But at the time the order was delivered to petitioner there was nothing to show that General Pope did not understand what the petitioner pretends to say he himself knew was the case.*

The battle on the right of the petitioner continued until some time

after dark, as testified to by the witnesses, particularly of King's division, McDowell's corps. *Generals Lee and Longstreet, in their official reports, have stated that it continued until 9 p. m.* This is no doubt true. If King's division, under Hatch, of McDowell's corps (Board's Record, p. 548), could attack as late as 9 p. m., and be in action up to that time, just as it had been in action the night before to a late hour, certainly
1628 the petitioner's corps could equally have made some tentative movement. If the petitioner was even so well prepared for *defense* as he assumes he was, and the enemy was in force directly in his front, as he also assumes they were, why should it have taken him an hour or more to get ready to move into action if he really had any intention or desire to assist his companions in arms on the right, where, as the witnesses all say, very heavy musketry firing was at that time heard? (Board's Record, pp. 100, 103, 107, 189, 235, 505, 520, 521, 549.)

The order to the petitioner to move into action *at once* was part of the plan of General Pope under which Kearney attacked and rolled up Jackson's left, and a general movement was made against the enemy's front on the Independent line of the Manassas Gap Railroad, and down the pike by King's division of McDowell's corps and south of the pike by Brigadier-General Meade's brigade of Reynolds' division, against which Longstreet opposed Hood's division with Evans' brigade and Wilcox's division as a support.

All day long, on the 29th, the petitioner, according to his theory, is either ready or getting ready; but never doing anything. Had he been so disposed, the character of the country on the left of the Manassas and Gainesville road by which his corps moved up towards Dawkins' Branch was so open that he could have massed his entire command just behind the ridge which overlooked the branch.

In the delivery of this 4.30 order, the concurrent testimony of Capt. Douglas Pope and the two orderlies is that no time was lost in starting or delay experienced in moving along beyond the incidental ones of the momentary meeting with General McDowell and occasional rough places on the Manassas and Sudley Springs road below New Market.

Captain Pope swore (Board's Record, p. 566) that the entire distance from Stone house to where he met petitioner could have been galloped over, except perhaps 300 yards.

However, it is hardly necessary to discuss this point, as all three witnesses say that in their judgment they were not an hour—not more than three-quarters of an hour—in riding down. Of course if Lieutenant Weld could go from petitioner to General Pope in an hour with all the intermediate delays he experienced, then Captain Pope could go from General Pope to petitioner in less time with an urgent message.

A point has been raised by petitioner that Captain Pope should have seen King's or Ricketts' division while *en route*. It must, however, be remembered—

1st, as to King's division: Heintzelman's diary reports it as arrived on the main field at 3.45 p. m. (Board's Record, p. 611). It had, we know, been previously supporting Reynolds' movements until General Pope decided to put it in another position. Patrick's brigade, which formed the rear of King's division, under Hatch, when it moved up the Sudley Springs road, first halted at Conrad's above where Capt. Douglas Pope struck the road, and afterwards (as well as Doubleday's brigade. Board's Record, p. 688) moved west into the shoulder of the woods northwest of Conrad's, and afterwards west of the line of road by Chinn's Branch down which Captain Pope came (Board's Record, p. 189), so that of course

Captain Pope did not, to his recollection, see any of King's division. Captain Pope also said (Board's Record, p. 572) that while he did not meet any organized body of troops from the time he struck the Sudley Springs road until he met the petitioner, yet that he thought there were Union troops and wagons all along on his left on the Sudley Springs road as he came down Chinn's Branch.

2nd. Relative to Ricketts' division being on the road, it must be
1629 remembered that after Captain Pope left petitioner, after an interview of fifteen minutes, he went along up the road, stopped at the well near Smith's, and was brought back for a further interview with petitioner. Also that on his second journey up it was late in the day, and after Ricketts had got up to Henry house hill, some of that division having, as we know from Brevet Brigadier-General McCoy's testimony (Board's Record, p. 641), taken the direct army road from Manassas Station, which on the map used here is called a new road. The advantage of having such a road, as shown by the movements during the war, undoubtedly caused it to be regularly made a county road when peace came. There was also a road parallel to the Sudley road which left it westerly at F. M. Lewis' house, ran north through B. F. Lewis' and Steers to Wheeler's; what the latter calls an army road. (Board's Record, p. 981.)

WHAT PETITIONER DID ON RECEIPT OF 4.30 ORDER?

We are now brought to the consideration of what petitioner did when he received the 4.30 order.

That order imperativly required him to *push forward at once* into action on the enemy's right flank.

He had received it at 5.15 p. m., or, with further allowance, 5.30 p. m.

He says here, in the closing argument of his counsel (Mr. Maltby), that 6.30 p. m., an hour later, was some time befor dark.

Did he do anything to carry out his urgent orders? Did he move *at once* forward? For if he was, as he says, apprehensive of attack and ready for defense, he must also have been ready for assault.

The answer is, he made at the utmost only the feeblest momentary efforts—the merest pretense, and then put his troops into bivouac, after marching some to the rear.

His own witness, Brigadier-General Sykes, division commander, convicts him of the charge.

It is a melancholy story, but must be repeated.

On the original trial Sykes swore, on cross-examination, after saying that he was with the petitionner when an officer brought him the order from General Pope, as follows (G. C. M. Record, pp. 177, 178):

Q. By JUDGE-ADVOCATE. Did General Porter make known to you the character of that order?—A. *He did not.*

Q. Did he read it in your presence?

A. Not that I know of.

* * * * * * *

Q. How long did you remain with General Porter on that occasion, after the receipt of this order?

A. I continued with him from that time all night.

* * * * * * *

Q. You had then, as I understand you to say, no knowledge that a positive order had been given by General Pope on that afternoon for General Porter to attack the enemy on their right flank?

A. I had no such knowledge.

The evidence of General Sykes leads *directly* to the conclusion that the petitioner had no intention or desire to attack or he would have told his division commander then and there.

Look at it in any light, there was no effort then, or at any time afterwards on that day, to put Sykes' division into position to support or participate in an assault.

On this point, the evidence of Capt. Douglas Pope is corroborative (G. C. M. Record, p. 57):

Q. What statements, if any, did General Porter make to you in regard to the movements which the order contemplated he should make?

A. In a conversation which I had with General Porter, after his reading the
1630 order, he explained to me on the map, where the enemy had come down in force to attack him, and had established a battery. I understood him to say that the enemy had opened upon him; but what he had done I do not now remember.

Q. How long did you remain with General Porter?—A. About fifteen minutes, I suppose.

Q. While you were there, or at any time before you left, did you observe any orders given or any indication of preparation for a movement in the direction of the battlefield?—A. I did not.

Q. In what condition were the troops there at that time?—A. I saw only a portion of them; the portion that I saw I believe belonged to General Sykes' division. They were on the road between the forks of the road and Manassas, what small portion of the troops I saw that belonged to General Porter's corps. It was my impression they were halted there; I saw the arms of some of them stacked.

Q. They had their arms stacked?—A. Yes, sir.

Q. Was not the sound of the artillery of the battle then pending distinctly audible at that point?—A. It was.

* * * * * * *

Q. Did you, or not, have another interview with General Porter after that time?—A. I did not. After receiving a written reply to the order I had delivered to General Porter, I started on my way back, and I suppose I had got a mile or a mile and a half from where General Porter was, when I was overtaken by an orderly, who said General Porter wished to see me. I got part way back when I met an officer, I supposed an aide-de-camp, of General Porter, who said that General Porter wished to see me. I went back and this aide-de-camp told me I better wait a few minutes. I did not see General Porter then.

Q. Had you, or not, seen this officer whom you supposed to be an aide-de-camp, during your first interview with General Porter?—A. I had, and had had a conversation with him.

Q. In the presence of General Porter?—A. While General Porter was writing the reply to the order I had delivered to him.

Q. What seemed to be his rank?—A. He was a first lieutenant, I think.

Q. Did he, or not, perform any act or make any remark in the presence of General Porter which induced you to believe that he was an aide-de-camp? If so, state what that remark and what that act was.—A. I do not remember his making any remark to General Porter, or General Porter saying anything to him. My impression is that he told me that he was an aide-de-camp. I firmly believed at the time that he was General Porter's aide-de-camp. I did not see any act indicating that, excepting that he was associated with General Porter; he was very close to General Porter at the time I had the conversation with him; within hearing of General Porter if he had listened to it.

Q. Do you, or not, suppose that his statement to you, that he was an aide-de-camp of General Porter, could have been heard by General Porter if he had been listening to your conversation?—A. It could.

Q. Do I or not understand you, then, to say that that conversation occurred in fact in the presence of General Porter?—A. In the presence of General Porter; yes, sir.

Q. Were you, or not, charged by that officer with a message to General Pope that a scout had come in reporting that the enemy were retreating through Thoroughfare Gap?—A. I was.

Q. Did you regard that message as given to you seriously or jestingly?—A. Seriously.

Q. How long a time had elapsed from the time of your interview with General Porter until your return to General Porter's encampment?—A. About three-quarters of an hour, I suppose; between that and an hour.

Q. On your return to his encampment, did you or not observe any preparation on the part of his officers or of the troops for an advance upon the enemy?—A. I did not.

And on cross-examination as follows:

* * * * * * *

Q. When you were brought back by the orderly and the aide-de-camp, as you supposed him to be, you did not find General Porter. Do you know where he then
1631 was?—A. I did not.

Q. Did anything occur to induce you to believe that General Porter had gone to the front?—A. There did not. I supposed he had just walked off a short distance, and would be back in a few minutes.

Q. From the time when you arrived to deliver the order to General Porter, up to the time of your second departure from General Porter's location to go towards General Pope, about what period of time elapsed?—A. I should suppose about *an hour*. It may have been a little more than *an hour*. I should think at least *an hour*.

Q. How long did you stay at General Porter's headquarters or location, after you were brought back by the orderly and the aide-de-camp?—A. A very few minutes.

Q. Would you say five or ten minutes?—A. About ten minutes.

Q. Did we understand you correctly to say that it was about fifteen minutes after you delivered the order to General Porter before you first started on your return?—A. It was about fifteen minutes.

Q. The remainder of the hour, then, which you spent near General Porter's location, was passed in your going about a mile and a half and returning about a mile and a half, and some ten minutes' further delay in General Porter's camp?—A. Yes, sir.

Q. Will you state, if you please, at what point General Pope was when you received from him the order of which you have spoken?—A. I cannot state exactly where it was. It was on the battle-field, the extreme right of it.

Intent may be gathered from acts as well as words.

This petitioner, with his headquarters 2⅝ miles from the head of his column, never went to the front on receipt of the order, but permitted General Pope's army to attack without rendering the slightest assistance.

While all along the center and right, according to Heintzelman's diary, a direct attack was being made, and while Kearney was rolling the enemy up on Jackson's left, and King's division of McDowell's corps was gallantly pushing in down the turnpike against Hood and Evans and Wilcox in support of Longstreet's command, this petitioner was calmly reposing at his headquarters, while the good, true-hearted men of the Fifth Corps, at the head of his column, held by his commands to a state of inaction, heard, with impatience that they could not do their share, the cheers of our brave soldiers. When the rebel yells indicative of Confederate successes rose on the evening air, grief and indignation filled the breasts of even the private soldiery at the head of that inactive column. They knew they had not done their part, and when, on the next afternoon, they were moved into action up by the school-house against an enemy, re-enforced by the Confederate General R. H. Anderson's large division (Board's Record, p. 61,) and S. D. Lee's artillery, although their own numbers were reduced at least 2,360 by the absence of Brigadier-General Piatt and of Brigadier-General Griffin at Centerville, they stood up courageously against the rebel artillery which mowed their ranks, and the battery of Chapman which unopposed enfiladed them fearfully, until human nature could stand no more.

Sullenly retiring, they felt they had vindicated the honor of their corps from the stain put upon it by this petitioner's conduct of the day before.

I have not inquired into the action of the 30th, nor brought Chapman or others to show how they were permitted to do their dreadful work unchecked, because what petitioner did on the 30th was ruled out on the trial in 1862.

We know incidentally that, with the exception of a section, this petitioner never brought his artillery into action on the 30th during that assault. We also know that Griffin's brigade went to Centerville and never came up during all the action of the 30th, while Piatt's brigade,

of Sturgis' division, which followed Griffin, did move up and lost heavily. (G. C. M. Rec., pp. 107, 149.)

1632 The responsibility for the absence of Griffin appears not to have depended on the petitioner. The division commander, Morell, was with it there, and the gallant Butterfield led the remainder of Morell's division.

Returning to the consideration of the 29th, we see that General Lee had formed a good estimate as to what this petitioner might do, and was in no wise apprehensive, for he brought back Wilcox's division to the support of Hood from the point south of the pike, to which he had sent it late in the day, when he received information of approach of Major-General Banks' brigade of observation from Bristoe.

The enemy had no available reserves beyond those in line. Jackson's men were exhausted, their ammunition nearly spent, and the chances for victory for the Union were good. All the prospects of success were blasted by the petitioner's conduct.

He has said in the closing arguments, through his counsel, substantially, that if guilty he ought to have been shot. He had, however, his former and subsequent services under Major General McClellan to plead for him. The members of the court were largely his personal friends, and to these circumstances may possibly be ascribed its leniency.

The history of the American Army gives but one other comparative illustration, and that is in the case of Maj. Gen. Charles Lee, the second in command, who was charged with having at the battle of Monmouth, in June, 1778, made a shameful and disorderly retreat without engaging the enemy. He pleaded that he did not believe General Washington desired him to attack and that he did make certain efforts. The court found him guilty and sentenced him to suspension for one year. After its expiration Congress dismissed him, believing, doubtless, the punishment was too mild.

History has since shown with great directness, that he was not loyal to Washington or to the latter's plans of campaign.

The petitioner, through his counsel, now says there was no *general* battle or continuous battle on the 29th. This is a recession from the first effort to prove that there was nothing but an "artillery" duel.

The reason there was no *general* battle, or continuous line of battle to confront the enemy, was because this petitioner during the day did not go into position or make any vigorous or sustained movement to connect with the Union Army on his right. Had he done so, the country would possibly have been spared the disaster of the following day—the invasion of Maryland and battles of Sharpsburg and Antietam.

When he received the 4.30 order he knew that his force was needed by his commanding general. He made no attempt to actually engage the enemy or aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack to secure a decisive victory and to capture the enemy's army. This the court of nine general officers which tried petitioner believed undoubtedly would have been the result, or they would not have convicted him on that particular specification.

Petitioner had placed before them the evidence of officers on his skirmish line and at the front as to what he and they believed and knew. Unfortunately the want of judicial authority in this Board absolutely prevents any effort to ascertain whether any weight was given to any witness's opinion on matters in which the court themselves were experts.

He himself estimated Longstreet at from 10,000 to 15,000 strong; and the court, as military experts, came to its conclusion, which the law permitted. As their decision was based on their judgment of the probable results on a given state of facts, it was final and conclusive.

1633 The petitioner here, however, adds 10,000 to Longstreet, and asks this Board to put its judgment as military experts against the nine.

If such were permissible as a rule of practice, we should never have a final determination in any case involving special professional knowledge and opinions.

PETITIONER'S MOVEMENTS TO THE REAR.

The petitioner has strenuously insisted before this Board that he did not "retreat" during the 29th and that there was nothing in the nature of a retreat in any of his movements.

This point is vital to his assumed case, because he was convicted of shamefully falling back and retreating from the advance of the enemy without any attempt to give them *battle*.

In the crime of larceny it is sufficient to prove that the article stolen was taken from its place by a person with felonious *intent* to appropriate it to his own use, knowing it to be the property of another, even if possession is retained but momentarily. The *gist* of the *offense* is the *intent*, and the one in question is analogous.

It was not necessary for the petitioner to fall back to Manassas Junction, or four, three, or two miles, in order to complete the offense of which he was convicted. It was sufficient to show that he did move back and conceal his troops so that the enemy considered them no longer an object of special attention.

If he retired even a hundred yards with intent not to give battle when other parts of the army were engaged, and he *knew or had any reason to suppose assistance was needed*, he failed in his duty under the military laws of his country.

The petitioner cannot say with propriety that he did not know help was needed, because his own dispatch to Morell to push over and help Sigel—"See if you cannot give help to Sigel"—(No. 28), conclusively answers it. In his closing argument on his trial he also spoke of General Pope's "hard-pressed left." (G. C. M. Record, p. 278.)

Now, what did he do looking towards falling back when he should have been *pushing forward?*

First. We have his orders to Col. E. G. Marshall, Thirteenth New York Volunteers, when he went forward with his regiment as skirmishers, *before* McDowell came up, "not to bring on an engagement," although there was a contest then going on on the right, which Marshall soon after saw from rear of his skirmish line." (Board's Record, p. 678.)

Second. His order to Brigadier-General Sturgis, immediately after the first shots from the battery off on the right front, for him to go back with Piatt's brigade to Manassas Junction and take up a defensive position. We know the brigade marched nearly if not quite back to the Junction, and did not get again up near its most advanced position until about dusk. (Board's Record, p. 712.)

Third. His orders to Morell (No. 30) to "move the infantry and everything behind the crest and conceal the guns. We must hold the place and make it hot for them. Come the same game over them they do over us, and get your men out of sight."

Now, this hide-and-seek game which this petitioner thus early began

in that day (Board's Record, p. 422) was in consequence of Morell's first dispatch to him, in which he said (No. 30) that Colonel Marshall reported

two batteries to have come down in the woods on their right
1634 *towards the railroad* and two regiments of infantry on the road.

Morell therefore concluded with the intimation that "*if this be so*, it will be hot here in the morning."

From this it may be inferred—

First. That Morell doubted the accuracy of the information; and

Second. That, if true, there would *probably be enough of the enemy come down during the remainder of the day and night to make it "hot" for petitioner's corps by the next morning;* and

Petitioner, miles to the rear, does not accept Marshall's and Morell's report and conclusions, although for other purposes he asserts the utmost confidence in them.

The pretense, however, of two regiments and two batteries near his front as an obstacle is sufficient for his purposes.

Morell then reported (dispatch No. 31) that he could move everything out of sight except Hazlitt's battery, which was on the right of the road, with Griffin's brigade on its right supporting it, principally in the pine bushes. Also that "*the other batteries and brigades are retired out of sight.*"

Morell then asked of his commander at the rear, "Is this what you mean by everything?" To which petitioner replied:

> I think you can move Hazlitt's, or the most of it, and post him in the bushes, with the others, so as to deceive. I would get everything, if possible, in ambuscade. *All goes well* with *the other troops.*

Sergt. *John Bond*, First Maryland Cavalry, a government witness, testified as follows (Board's Record, p. 882):

> Q. What did you then do?—A. I then retired to Manassas Junction.
> Q. Where did you come to a stop?—A. I first met a lot of troops and I met a group of officers; one of them said "Where from, sergeant?" I said, "The battle-field"; he says, "What news?" I says, "Good"; he says, "Do I understand you to say we are holding our own?" I says, "Yes, we have driven the enemy"; he says, "Do I understand you we are holding our own?" I says, "Yes"; he repeated that question three times. Hes ays, "You can go." I went off a short distance from where I was talking with the general, and I asked them who that general was; they told me it was General Porter.
> Q. Did you return to the battle-field then?—A. No, sir.
> Q. After that time what indications were there of any battle going on?—A. I could hear firing off and on.
> Q. How long after that did you hear firing?—A. I could not exactly say.
> Q. With relation to sunset or dark?—A. I could not exactly say; it was more or less the whole afternoon.

The next dispatch (No. 28) from petitioner was the one to Morell to push over and aid Sigel, of the result of which we know. (Board's Record, p. 423.)

If the petitioner at *the time of that dispatch had known or believed* the enemy in his front in the force he now pretends, he would never—being, as he claims he was at that time, an independent corps commander—have given any such order to Morell, unless in obedience to what McDowell directed before he left him on the railroad.

Still later in the day he sends this interesting and suspicious dispatch to Morell:

> Hold on, if you can, to your present place. What is passing?

This he now explains as countermanding the order to push over to aid Sigel.

1635 This was followed by dispatch No. 32 to Morell, as follows:

Tell me what is passing quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

F. J. PORTER, *Major-General.*

Morell now began to understand matters a little better, and sent this dispatch in reply (No. 35):

Col. Marshall reports a movement in front of his left. I think we had better retire. *No infantry in sight, and I am continuing the movement.* Stay where you are, to aid me if necessary.

MORELL.

Although there was no infantry of the enemy in sight, the senior division commander now thought they "had better retire," but seems apprehensive his commander will fall back in advance of him.

The petitioner now concluded to give an order with a view to finding out a little about the force of two regiments reported on his front; so he assured Morell in a dispatch (No. 36) that he had all within reach of him, and then said:

I wish you to give the enemy a good shelling, without wasting ammunition, and push at the same time a party over to see what is going on. *We cannot retire while McDowell holds his own.*

This shelling does not seem to have taken place, though if the enemy had been present in the force he pretends they were, he would never, on his assumption as to his own inferiority of force, have given such an order to shell the enemy.

Late in the day Colonel Marshall sent Morell another report, as follows (No. 34):

General MORELL: The enemy must be in much larger force than I can see; from the commands of the officers, *I should judge a brigade.* They are endeavoring to come in on our left, and have been advancing. Have also heard the noise on left as the movement of artillery. Their advance is quite close.

E. G. MARSHALL, *Col. 13th N. Y.*

When Marshall reported two regiments of infantry on his front on the road, petitioner immediately moved back all his own forces.

Now that Marshall reported a brigade about 6 p. m., the petitioner gave orders for an attack, and he declares he did it of his own volition, and not in consequence of receipt of the 4.30 p. m. order.

Assuming it was done of his own volition, we can possibly form some idea of the amount of force under Longstreet he *then believed* was in his front.

AUGUST 29*th*.

General MORELL: I wish you to push up *two* regiments, supported by *two* others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack the *section* of artillery opposed to you.

The *battle* works well on our right, and the enemy are said to be retiring up the pike.

Give the enemy a good shelling as our troops advance.

F. J. PORTER,
Maj. Gen'l Command'g.

Thus did the petitioner wait until late in the day before issuing any orders to move forward, or engage even, until induced to do so by information of success on the right of our line.

If he really believed Longstreet was in his front with five, ten, fifteen, twenty, or twenty-five thousand men, it requires no argument
1636 to show that those "two regiments supported by two others," ordered by him to attack, would have been destroyed in a few moments.

The character of the order shows he knew well what sort of operations he should have undertaken, if necessary, early in the day.

In his opening statement (p. 38) he says as follows, viz: "*That about 6 o'clock favorable reports from the right wing, stating that the enemy was retiring up the pike, induced me to direct General Morell to attack.*" *By the very order just quoted, to attack with two regiments, &c.*

Nevertheless, assuming his own carefully-prepared opening statement to be correct as to what he did at that time, he sent the following dispatch to Major-General McDowell, which constitutes one of those lately found by the latter, viz:

Gen'l McDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

F. J. PORTER, *Maj. Gen. Vols.*

AUG. 29—6. p. m.

In this dispatch it is to be noticed he says, "Infantry are also in front"; and yet a previous dispatch of Morell to petitioner said, "No infantry in sight" (No. 35).

These statements and dispatches speak for themselves; they are absolutely and unqualifiedly unreconcilable, and no language which can be used will add to the force of the contrast.

At *sunset* petitioner says he arrested his order to Morell to attack with two regiments by dispatch No. 38, and ordered him to put his men in position to remain during the night, remarking, also, that McDowell says all goes well and we are getting the best of the fight, and concluded the dispatch as follows:

Keep me informed. Troops are passing up to Gainesville, *pushing* the enemy. * * *

He admits that at time of writing this last dispatch just quoted he had received General Pope's 4.30 order to attack at once, and yet, although he knew our troops on the right were in action and moving into action, he put his own corps into bivouac.

Was it that he did not propose to lend a helping hand to General John Pope to win a decisive victory? We shall see when the subject of "*animus*" is considered.

Whether the petitioner did fall back and withdraw from the contest into which duty should have led him or not, the dispatches just quoted afford strong indications that he put his troops far enough out of the way to render them of no avail whatever to General Pope's army.

A reference to some of the evidence will further elucidate this.

Col. *Benjamin F. Smith*, One hundred and twenty-sixth Ohio Volunteers, called for government, testified in 1862 as follows (G. C. M. Record, p. 112):

By the JUDGE-ADVOCATE:

Q. Will you state your position in the military service of the United States?—A. I am a captain of the Sixth Regular Infantry, and colonel of the One hundred and twenty-sixth Regiment of Ohio Volunteers.

Q. Will you state to the court whether you were serving with any part of the Army of Virginia, commanded by Major-General Pope, on the days of the 27th, 28th,
1637 29th, and 30th of August last; and if so, in what brigade and division?—A. I was serving in Colonel Chapman's brigade, of General Syke's division.

Q. In what direction did that brigade march on Friday, the 29th of August last?—A. We had marched from Fredericksburg by way of Warrenton Junction, and arrived

at Manassas Junction, I think, on the 29th of August, the day before the battle of Bull Run. We arrived exactly at the place where the railroad had been destroyed; the wreck of the train was there, and there we halted. Later in the day, in the morning, we retraced our steps to the branch railroad running, I think, towards Gainesville or Manassas Gap, and followed the direction of that road some few miles. We then halted on some rising ground, where we could see the country beyond, over the woods, the tops of the trees. It was a wooded country. While we were halted there a battery of the rebels opened upon us, but fired some three or four shells only, I think; there may have been a half a dozen. Our brigade then marched into a field, and the regiments were placed in order of battle. I recollect that General Morell's division was in our advance, on the lower ground. Some of our pieces replied to this rebel battery. I received permission from the commanding officer of my regiment to go to a more elevated piece of ground, a few rods distant, and while there I saw our batteries reply.

A short time afterwards (probably half an hour) we received orders to retrace our steps, and march back in the direction we had come. We then marched back to near Manassas Junction, and *camped in the woods alongside this branch railroad I have mentioned.* That night I was placed on duty as the field officer of the pickets of Sykes' division. About daybreak the pickets were called in, and we marched towards the battle-field of Bull Run, and were engaged in that battle.

Q. What was the effect of the reply of your guns to this attack of the rebel battery?—A. It seemed to silence that battery, and it withdrew. At least that was the impression I had at the time.

Q. What amount of infantry force, if any, did there seem to be supporting this rebel battery?—A. I did not see them.

Q. Before you received orders to fall back and retrace your steps along this road, had or had not this rebel battery been completely silenced?—A. I think it had been.

Q. Were there or not, at that time, clouds of dust in view, showing an advance of the enemy?—A. Clouds of dust were distinctly visible further over beyond the trees. Whether they were troops advancing, or whether they were moving in another direction, I could not tell. I could see distinctly the clouds of dust as if there was a large body of troops moving.

Q. Did you or not see the accused, General Porter, at the head of the column on that day?—A. No, sir; I do not recollect of seeing General Porter at all that day.

Q. Did you or not see General McDowell that day?—A. I saw General McDowell before we arrived at the hill or rising ground I have spoken of.

Q. Do you or not know whether General McDowell had left the command before this engagement with the rebel battery took place?—A. I do not recollect about that.

Q. Will you state at what hour on that evening you arrived at your encampment near Manassas Junction?—A. It was some time in the afternoon, I think; I do not recollect distinctly.

Q. Was it nightfall?—A. No, sir; it was before night. I went on duty to post my pickets just at dark.

Q. Was there or not any such display of the enemy's forces as to make it necessary, in your judgment, to retreat before them?—A. I had no means of knowing. When we moved back from that position I supposed it was for some proper cause, but I did not understand at all what the cause was. I did not receive any impression that we were retreating from the enemy. I supposed that we were making a reconnaissance to feel the enemy in that direction, and, having found him, that we had moved back for some other purpose; and, not knowing about the orders to the general, I remained under that impression. The examination by the Judge-Advocate here closed.

Examination by the ACCUSED:

Q. Do you recollect the road over which you marched the following morning, the 30th of August, going up to the battle-field?—A. Yes, sir.

Q. Was your camp near the junction of that road and the railroad?—A. Yes, sir.

1638 Q. Was that road near to Manassas Junction?—A. I thought it was about a mile or two from the junction.

Q. It was not at the junction?—A. No, sir.

Q. Do you recollect Bethlehem Church?—A. No, sir.

Q. By looking at the map do you think you could recognize the point where you were?—A. I might.

Q. Look at the map before the court, if you please, and point out the place, if you can.—A. (After looking at the map.) I recollect that where our brigade lay the railroad was in view, and also the road we took next morning.

Q. According to the measurement upon the map, an inch to the mile, how far is that from Manassas Junction?—A. It is probably some two miles.

Q. When you say that the rebel battery was silenced, do you mean that it was incapacitated, or that it ceased firing, or was withdrawn?—A. I thought it was withdrawn?

Examination by the Accused here closed.

Examination by the COURT:

Q. At what time on the 27th of August did your division arrive at Warrenton Junction, and how far had it marched that day?—A. I am under the impression that we arrived there about *noon;* the time of the day is not fixed distinctly on my mind. I do not recollect the camp beyond Warrenton, which we left; I might recall it by looking on the map. (Examining the map.) We marched from some point on this road (indicating on the map the road referred to) by Bealton, and then down the side of the track to Warrenton.

Q. Was your brigade the leading brigade?—A. I do not recollect whether it led that day or not.

The examination of this witness was here closed.

Brig. Gen. *Charles Griffin*, called on the trial for petitioner (G. C. M. Record, p. 162), after referring to General McDowell's arrival at Dawkins' Branch and going to the right, testified as follows:

I received an order almost directly after General McDowell had left to recall my pickets [Sixty-second Pennsylvania, which were deployed in front to the left and south of Thomas Nealon's], and orders to move my command *to the right.*

Now, from whom did that order come? It must have come from this petitioner in consequence of McDowell's verbal instructions and General Pope's orders. The petitioner says, nevertheless, that as he went back to where his troops were he saw the enemy gathering in such force in his front, that he had to send down the road towards Manassas Junction, to rear of his column, to direct King's division under Hatch to remain with him. General Griffin further said:

I attempted to go to the right and moved probably 600 yards, until, with the head of my column, I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through.

It was reported by somebody, I cannot say who, "You can't get through there." We then faced about and moved back to the hill where the battery I first referred to was stationed.

As we were getting to this hill the enemy's batteries opened upon us.

These batteries, the witness said in 1862 (G. C. M. Record, p. 162), opened on petitioner's head of column about one o'clock—the very time Brevet Major-General Sturgis fixes it (Board's Record, p. 711), but take notice that, up to that moment, *after* Griffin had been withdrawn, the petitioner did not believe the enemy were in force in his front, as is apparent from his conversation with Sturgis.

My brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing; I cannot say how long. * * *

1639 Further, as to the enemy and large clouds of dust which he noticed from Thoroughfare Gap, witness said:

I have stated that the enemy seemed to be coming from Thoroughfare Gap. In fact, there is no doubt if that point was Thoroughfare Gap, that the enemy was coming through there *all day.*

Neither petitioner nor Longstreet have claimed *here* that the latter had more than 25,000 men present at any time during the 29th of August, so that petitioner's statement on his trial that he believed Longstreet had a force present on the 29th of between 10,000 and 15,000 men was nearer the truth. (G. C. M. Rec., p. 266.)

On cross-examination as to the obstacles which made him retire when going to the right and the efforts he made to overcome them, Brigadier-General Griffin said:

I led off my column. We ran up into some little, thick pine bushes. We halted there. The next order I got was to move back again.

Some one reported that we could not get through. I made no reconnaissance whatever myself.

Further on he was questioned by the court as follows (G. C. M. Record, p. 169):

Q. You say that you had failed to get through to the right during the day of the 29th August. Will you state what efforts were made by you or by General Porter to get through on the right during the day?—A. *I merely obeyed orders. My position was at the head of my brigade. What efforts General Porter made I am not aware of.*

After this supporting of batteries, Brigadier-General Griffin evidently received orders from petitioner very similar to those received from petitioner by General Sturgis at 1 p. m. when those rebel guns opened, for he says (G. C. M. Record, p. 163): "We had started back towards Manassas Junction," when another order came from petitioner near sundown to attack, and General Griffin says he faced his command about immediately and started back.

He says, as to the point where this order came to hand (G. C. M. Record, p. 163):

We were probably *a mile and a half or two miles* from the position referred to in my previous testimony as occupied by this battery [Hazlitt's U. S. battery].

In his examination by the court he said (G. C. M. Rec., p. 168), as to this retreat by Morell's division: "I should think my brigade, as I have stated, moved a mile and a half or two miles—not far from a mile and a half."

This evidence of petitioner's witness was not apparently satisfactory, for it showed a good deal in the nature of a *retreat*, and certainly a falling back for a considerable distance.

Maj. *G. K. Warren*, Corps of Engineers, who was then colonel Fifth New York Volunteers, commanding a brigade under him, was called before *this* Board to prove that the falling back was not as great as Griffin had said, sixteen years ago, when his recollection was fresh.

This movement of Griffin appears to have been by Morell's order and about 5.30 p. m. Warren admits he himself fell back a hundred yards or so (Board's Record, p. 19), but says there was no retreat.

In the 6 p. m. recently discovered dispatch of petitioner to General McDowell last before recited is this remark:

Failed in getting Morell over to you. After *wandering about* the woods for a time I withdrew him, and while doing so artillery opened on us.

Here, it will be perceived, petitioner has reported to McDowell that he had made some sort of effort to do what McDowell says he
1640 ordered him to do, viz, to put his forces in where they could be joined to the left of General Pope's army.

The petitioner would not have made such a report if McDowell *had ordered him to* REMAIN *where he was.*

Further, this report gives as excuses for not getting Morell over that the character of the woods through which he wandered prevented, and that even scouts could not get through, despite the fact that there was the straight and unobstructed Sudley Springs road as well as the Five Forks road. From the evidence of Brigadier-General Griffin just above cited (and he was petitioner's witness on his trial,) it is plain that no part of the Fifth Corps "wandered about the woods" on that day.

The artillery opening is mentioned as merely a subsequent incident, and not as the controlling cause, as petitioner would have us believe, why he withdrew Morell.

Capt. *J. J. Coppinger*, Twenty-third United States Infantry, then cap-

tain Fourth Infantry, a government witness, testified as follows (Board's Record, p. 948):

Q. The next morning you marched for what place?—A. Manassas Junction.
Q. From there, what direction did you take?—A. Towards Gainesville.
Q. Do you recollect a place named Bethlehem Church?—A. I have an indistinct recollection of a small church on the left of the road.

Although that church was an indistinguishable mass of ruins according to the witness Leachman, nevertheless *all* the witnesses on that road seemed to know that there was a "church" there. All refer to it as [Bethlehem Church, and recollect it, and speak of it in their evidence.

Q. You went out on that road; do you recall any incident connected with that march out on the road towards Gainesville?—A. Do you mean the passage of other troops?
Q. You went out on that road; when did you receive a command to halt?—A. When, I think about two shots close to the edge of a wood—two shots, I think, were fired: just about that moment our command halted.
Q. From what direction?—A. Front and right.
Q. Then what did your regiment and brigade do?—A. Halted, *and were ordered to face about.*
Q. Then what?—A. We were marched to the rear in column of fours.
Q. To what point?—A. I cannot give you the point; but the next point I recollect is being on a side road which leads off towards the battle-field of Bull Run. Perhaps it would be better if I were to say that my memory of that battle-field—I was left on the field between the lines senseless, until the next day, and my memory of both those days is somewhat spasmodic. Some things I see as clearly as anybody I see in this room; and there are intervals of which I have a very poor recollection. Now, between the time of our being marched *here*, and our being halted, I don't recollect. (Witness indicates points on the map.)
Q. As to this point of fact—these shots being fired, and you countermarched to the rear—how soon after the shots were fired was the order for you to move to the rear?—A. I think almost immediately.

The Board will notice how this witness corroborates what was said by the petitioner to General Sturgis after those shots were fired, when Sturgis called his attention to the fact that there must be a gun up there; that he had just seen the glint of a gun, and the petitioner said he was mistaken (Board's Record, p. 711).

Q. Do you recall with any certainty how long or how far you marched to the rear?—
A. We marched quite a distance to the rear, I think from one to two miles, if
1641 not more: but I am almost certain that the command was, "Halt; about face,"
and within there minutes I think, and perhaps a shorter time, we were in motion to the rear.
Q. During that day did you move to the front again; if so, when?—A. We were moved on a cross-road, which led us the next day to the battle-field. (Witness indicates in the direction of the Sudley Springs road.)
Q. When did you say you made that move at the cross-road?—A. I cannot give the time.
Q. Some time that day?—A. In the afternoon.
Q. Did you encamp there, or did you go back again?—A. We passed the night there; stacked arms, and, I think, lay down by our arms.

Capt. *George M. Randall*, Twenty-third United States Infantry, a government witness (Board's Record, p. 725), testified as follows:

Direct examination:

Q. On the 29th of August, 1862, where were you, and what rank did you hold in the service?—A. Second lieutenant, Fourth Infantry, attached to Sykes' division.
Q. Where were you on that morning?—A. We were at Bristoe Station.
Q. Moved up from there to Manassas Junction?—A. Yes, sir; from Manassas Junction we took position on the Gainesville road beyond Bethlehem Church.
Q. When you were at Manassas Junction were there any indications of an action? If so, what were they?—A. Yes, I think so; I heard very distinctly heavy firing; as near as I can recollect, it was about half past nine or nine o'clock in the morning.
Q. How long did you continue to hear that?—A. I do not recollect; I heard artillery firing during the day several times, and I think along about three or quarter to four o'clock in the afternoon I heard it again; quite a brisk firing at that time.

Q. How far did you get upon the Manassas and Gainesville road?—A. I think we moved about three miles, probably four miles beyond the church.

Q. Did you go up to the front?—A. Very near it, sufficiently far that I could see the opening between our lines and where the rebels were supposed to be; at that time we were in a belt of timber; the head of the column, as near as I can recollect, halted at the edge of it.

Q. What indications were there of an enemy in front of you?—A. I heard several shots exchanged, and also some few shots from the skirmish line.

Q. Anything more?—A. That is all.

Q. Did you see any enemy?—A. I did not.

Q. What did your brigade then do?—A. I think some time in the afternoon we counter-marched probably about two and a half miles, and then halted and bivouacked for the night.

Cross-examination by Mr. BULLITT:

Q. About what time did your company get up into the front?—A. I think about eleven o'clock.

Q. How near to the front were you?—A. I suppose we were three-quarters of a mile from the front; sufficiently near so that we could see the open space.

Q. You say three-quarters of a mile from the front; what do you call the front?—A. Where the head of our column halted.

Q. Did you change your position that day at all to the right or left?—A. I think not. I think we moved to the rear.

Q. You have no recollection of being moved back into the woods?—A. I think we halted in the woods.

Q. The only move you made was to march back about two miles?—A. Yes; that is all I recollect.

* * * * * * *

1642 Q. Will you mark the point to which you suppose you went back?—A. We went back about two and a half miles or two miles, but the exact point it is impossible for me to mark; we may have moved up *here* [in the woods] and taken a zigzag.

Q. Then you took your position in the woods, and then you subsequently countermarched toward Bethlehem Church. Now, I want to know whether you made any other movement after you had passed Bethlehem Church, and got up toward Dawkins' Branch, except first to march to the point where you first halted, then you got into the woods, and afterward countermarched about two miles back to Bethlehem Church; did you make any other movement during that day?—A. No, sir.

* * * * * * *

Q. Will you explain what you mean by countermarching in that particular instance?—A. We marched to the front, and then faced the column about and went to the rear.

Q. Did you countermarch by brigade?—A. By regiments and brigades, as near as I can recollect.

Q. By which, regiments or brigades?—A. By brigades, I think.

Q. You were in the leading brigade as you went forward?—A. I was in the leading brigade, Sykes' division.

Q. When you countermarched and marched to the rear, where were the other two brigades of the division?—A. I think they were going to the rear.

Q. You did not pass them?—A. No, sir; I think not.

Q. Did you march in the road, going back?—A. Yes, as near as I can recollect.

The late Bvt. Maj. Gen. Robert C. Buchanan, U. S. A., retired, called by petitioner before this Board (Board's Record, p. 215), testified as to the movements of the brigade he commanded in Brigadier-General Sykes' division, after they left Manassas Junction on the 29th, as follows:

Q. Which way did you move then?—A. We had been moving by the right flank; we then moved by the left flank; we moved down by the road which takes us near a church, which I have since heard called Bethlehem Church, in the direction of Gainesville.

Q. Where did you halt then?—A. Near that church and in advance of it.

This witness also recollected the Church, despite the witness Leachman that it was wholly fallen.

Q. In what position were your troops then?—A. At that time directly on the road.

Q. How were you formed when you halted there?—A. We were formed in line of battle immediately after we halted.

Q. How long did you remain in that position?—A. I cannot tell you.

Q. During the balance of the day, I mean.—A. We did not leave that ground that day except under various instructions that we got to countermarch; from time to time we countermarched of course on the same ground.

Q. You did not leave that ground?—A. No; except towards night we changed our direction, I think on to a little road that led us off to the turnpike.

Q. Practically, you remained in that position during that day?—A. During that day.

Q. Do you recollect any stacking of arms?—A. Yes; they stacked arms from time to time.

Q. When you did that what position was your line in—still in line of battle?—A. Always; always ready.

Serg. *Solomon Thomas*, Eighteenth Massachusetts Volunteers, Martindale's brigade, Morell's division, a government witness (Board's Record, p. 840), testified as follows:

Q. Where were you on August 29, 1862?—A. With General Fitz-John Porter's corps, Eighteenth Massachusetts, Martindale's brigade, Morell's division.

1643 Q. Do you recollect being at Manassas Junction on that day?—A. I do.

Q. Did you move off on the Gainesville road?—A. We moved up on the line of the railroad. We moved more in a direct line in front, though we were intending to move to the right.

Q. How far upon that road did your regiment go?—A. We went upon that road near y to a small creek, or what had been originally a small creek; it was dry or nearly so at that time.

Q. What did you do there?—A. We then halted, and the Thirteenth New York, or a part of it, which was thrown out as skirmishers—a battery was planted in our front a little to our right, in the fields, and as the skirmishers of the Thirteenth advanced we were deployed to the right, into the woods: our right rested in the woods. We halted and lay down. This was probably ten o'clock in the morning, I should say; might have been a little later.

Q. How long did you remain there?—A. We remained in that position—I should say it was half-past four when we were called to attention and right-about face, and moved out from that position, left in front, upon the same road that we moved down on in the morning. I don't know the distance, but we had been marching some time.

Q. Back toward Manassas Junction?—A. Yes; toward Manassas Junction—when an officer came riding from the Manassas Junction way, having a dispatch, and rode up to General Porter and handed him the dispatch. Then we were commanded to halt; we did. General Porter dismounted and sat down by the side of the road and leaned his back against a tree—quite a large tree—and read the dispatch, and went up and remounted and called us o attention and right-about face. We marched back upon the same road we had come on, moving then right in front, until we came near the position of the road where we had moved into the woods on the right in the morning. We then moved out to the left, into an open field. The artillery was brought into the field and parked in our front. We were formed in line and were ordered to stack arms; we did so. Orders were received that there should be no fires made to make any coffee; that we were to remain perfectly quiet. The adjutant received orders that if there were any orders received during the night he should deliver those orders to the commander of each regiment in person, so there should be no loud words spoken; and we were to remain. Me and some of my comrades spread our blankets and were preparing to lie down for the night. As we sat down, before we got ready to lie down, we heard upon our right a shout which we knew was a charge—from the shout; then we heard musketry discharges.

Q. What did you understand at that time?—A. I felt at that time that we were expected to charge on the rear and flank in conjunction with what was going on in front.

Q. About what time in the day, in reference to sunset, was it that you were halted on your way back to Manassas Junction, and that an officer came up with a dispatch?—A. I should judge from the position of the sun it must have been somewhere from five to half past five o'clock.

Q. During the day did you hear any indications of a battle going on; if so, what were they and where were they?—A. In our immediate front we heard an occasional discharge of musketry, and, in fact, they were pieces of railroad iron fired from a rebel battery right over our right; and two pieces lodged in the rear of where I lay, probably forty feet in our rear. Some of the boys went and dug them up, and one of them was 18 inches in length, the other was about 15. We thought of bringing them home, but they were rather heavy, so we left them on the field. Then, while we were lying there, beside that we heard, upon our right, distant firing all day, but not continuous; there were intervals that we could hear artillery distinctly.

Capt. *A. M. Randol*, First United States Artillery, a witness for petitioner, testified (Board's Record, p. 93) that his battery moved back to within 150 yards of petitioner's headquarters for water, and arrived

there at 4 p. m., and remained there. This was east of Bethlehem Church—a building which this witness recollects.

Lieut. *S. M. Weld*, formerly petitioner's aide-de-camp, said (Board's Record, p. 270) that General Sykes' division was moved back to near the junction of the Sudley Springs and Manassas and Gainesville road, some fifteen or twenty minutes' march from Morell, and that Warren intervened.

1644 General Sykes' right was near petitioner's headquarters, and his left one half mile back.

Bvt. Maj. Gen. Z. B. Tower, U. S. A., then of Ricketts' division, McDowell's corps, said (p. 446) that as his brigade moved up they met regulars on the Sudley springs road about dusk, an hour after he left Manassas—probably two miles distant. They were on his right.

Thus we perceive that much of petitioner's corps was moved back considerable distances, and the regulars 2⅝ miles to the rear from Dawkins' Branch, and were in bivouac when King's division of McDowell's corps, under the supervision of McDowell himself, was having its gallant fight with Longstreet.

They were put out of sight and removed from a position of usefulness.

An examination of the dispatches sent that day by petitioner will lead to the conclusion that he did not intend to fight under General Pope if he could help it.

PETITIONERS' DISPATCHES.

Just before I began this argument the petitioner, through his counsel, undertook deliberately to explain some of his dispatches and his conduct to which those dispatches refer.

His first statement substantially was that Brig. Gen. Charles Griffin, who went with his brigade to the right, came back after Major-General McDowell left; and the fact that batteries opened just as he got back shows, as petitioner would have us believe, that he did see enemy's batteries as he was returning to his column from the last McDowell interview.

Griffin's evidence, however, does not confirm this (G. C. M. Record, p. 162). The latter remained over by the "little pine bushes" halted—making no effort to push ahead or find out if there was any serious obstacle in his way until ordered back by petitioner.

The pretense had been made of obeying McDowell's orders— it was enough for an excuse—and when petitioner's counsel deliberately states, for his client, that "petitioner had no knoweledge of the woods towards Five Forks" he increases the measure of his responsibility for failure.

There is probably nothing which more conclusively shows his intention to do nothing that day than this absolutely utter indifference to these roads through Five Forks, by which he could have joined General Pope's left, had he been so disposed.

To say that Griffin was moved to the right because petitioner intended to *make an attack* snows—seeing it was begun immediately after McDowell's departure—that it was under his, McDowell's, orders to petitioner to put his forces in there where the dust was rising off to the north and west, back of Meadowille Lane.

The next explanation petitioner has ventured upon, with great deliberation in the argument of counsel who last preceded me, is that his dispatch No. 29 (Board's Record, p. XXVI), to McDowell expressing an intention to retreat, was written for the reason that Lieut. (now Maj.)

S. N. Benjamin's battery, Second United States Artillery, ceased firing near Groveton about 1 p. m; that then firing practically ceased and began near 3 p. m. near Sudley Church, from whence the petitioner concluded our forces were retiring, and that General Pope was therefore doing what he for his own purposes asserts General Pope contemplated, viz, "falling behind Bull Run."

Hence petitioner decided to withdraw.

I speak only from my notes of the learned counsel's closing
1645 remarks just before I began this argument, and would like to know if I interpret him correctly.

Mr. BULLITT. That is, that there was a lull in the firing of the artillery about that time; it may be a *little* later. Perhaps you do not exactly catch my meaning. My meaning was that the firing lulled. I do not mean to say that there may not have been shots.

The COUNSEL FOR THE GOVERNMENT. That is, as I understand it, an occasional shot or so.

The limits of this argument will hardly permit *all* the irreconcilable statements of this petitioner to be followed and contrasted or commented upon.

As to this latest utterance, it is sufficient to say that it is not founded on Benjamin's evidence, for that officer distinctly says (Board's Record, p. 614) on cross-examination by petitioner's counsel, that he, Benjamin, took position at Groveton about 12½ p. m., and remained at that point *over three hours.*

When we look at the latter's direct examination we find what a stubborn and gallant fight he made from 1 p. m., against eighteen guns placed from 1,000 to about 1,500 yards from him.

These guns during that fight were added to by eight more, making in all twenty-six guns that Benjamin had to contend with.

Altogether, from 1 p. m. to at least 3½ p. m., there was an unusually *heavy* cannonading in progress right at Groveton itself, and thence northwesterly to the enemy's position—possibly heavier than at any other time during that battle.

The petitioner's excuse, therefore, is answered by Benjamin's evidence.

During all that long afternoon until the final general assault, there was heavy fighting on the whole of Jackson's line, as has been shown by citations in this argument.

The *third* statement in this latest utterance is, that petitioner's dispatch No. 28 (Board's Record, p. 423) to Morell, to push over and aid Sigel, was written *about 3 p. m.*, and the movement over by way of retiring, but with direction to Morell to aid Sigel if he found he could do so.

The idea, says petitioner through his counsel, was that Morell should fall back to the northeast. In other words, the petitioner would have us believe that he undertook to carry out his expressed determination to withdraw to Manassas by sending Morell's division in a *contrary direction.*

The correct explanation is naturally found in General McDowell's orders to petitioner before he left him.

In his reply to the Hon. Zachariah Chandler, in his defense before his court-martial, and in his opening statement here, has not this petitioner, as we have seen, insisted that the very ground over which he ordered Morell to go was broken country and impracticable?

If he could order his leading division, the one nearest his assumed powerful enemy, to march over that country by a flank movement at 3

p. m., it is plain there was nothing *then*, in his judgment, before him to prevent such a flank movement.

Nevertheless, when judicially asked why he did not do it under the joint order and McDowell's concurrent orders, he says there would have been "danger and disaster" in obeying, and that it would be a fatal military blunder.

However, if this petitioner believed at 3 p. m. that he could of his own volition order his leading division to push over and aid
1646 Sigel, what was there to prevent the rear division under Sykes being sent either by "Five Forks" or "Sudley Springs" road to our struggling troops, whom he admits in his dispatch he thought needed aid?

It was but a momentary order, the execution of which was never attempted, for it was followed by No. 33, from petitioner to Morell, to hold on to his present place, but it shows that he knew what was required of him and that it was not impracticable.

The petitioner says now, through his counsel, that the two dispatches he sent, addressed, one to General McDowell and the other to Generals McDowell and *King*, expressing an intention to retreat, are identical, and were sent by different messengers *before* Lieutenant Weld went with another message at 4 p. m. (G. C. M. Record, p. 129), to the effect that General Morell would now be strongly engaged; that there was a large force in front of him, &c.

Let me remark that this very message which Weld did take at 4 p. m. was one that would have had the effect to lead both General McDowell and General Pope to believe that the petitioner was making every effort to do his share in the operations that were then being conducted.

The assertion that the two dispatches, one to McDowell and the other to McDowell and *King*, were identical, or in other words contemporaneous, does not seem to be borne out by the facts.

Petitioner had located his own headquarters in the forks of the Sudley Springs and Manassas and Gainesville road. (Petitioner's Opening Statement, p. 40.)

The Sudley Springs road *was open all day* to our men, and wholly unobstructed to messengers and orderlies.

Possibly he sent the one to General McDowell before 4 p. m., because it is the dispatch which came into and has remained in General McDowell's possession.

The explanation of why General Pope did nothing, so far as the petitioner is concerned, with reference to that dispatch expressing an intention to retreat, was because Weld, the petitioner's aide de camp, came at 4, or between 4 and 5, to General Pope, and said that they, viz, petitioner's forces, would be strongly engaged. This is merely a supposition. However, we find that at 4.30 General Pope ordered him to push into action at once.

Accepting for argument the petitioner's explanation, that he sent a dispatch to McDowell about 3 p. m., announcing his determination to retreat to Manassas, it seems plain that it was the following one, which General McDowel has produced before this Board, viz:

GENERAL MCDOWELL: The firing on my right has so far retired that, as I cannot advance, and have failed to get over to you, except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate please do so. I have sent many messengers to you and Gen'l Sigel, and get nothing.

F. J. PORTER,
Maj. Gen'l.

An artillery duel is going on now—been skirmishing for a long time.

F. J. P.

If petitioner did not actually send this dispatch to McDowell until after he sent Lieutenant Weld to General Pope at 4 with word that petitioner "would now be strongly engaged" (the two messages being contradictory), he may have received General Pope's 4.30 order before writing to McDowell, and saying he should withdraw.

We have an excellent clew to the time at which the first note
1647 announcing an intention to withdraw was brought to General Pope's notice in Major-General Heintzelman's diary, in which he says:

Forty-five minutes past five, General McDowell on the field at headquarters. Heavy firing on our center. Kearney reports he is driving the enemy back. *General Porter reports the enemy driving him back, and he is retiring on Manassas.*

Thus while the gallant Kearney was rolling Jackson up on the right of our line, petitioner, without either pushing in or moving up the Sudley road towards the Army, calmly declares what he proposes to do, although his loss by the artillery fire was the most insignificant.

Through Major-General Sigel's report of the 16th September, 1862, it appears he expected petitioner's corps to come in on his left (Board's Record, p. 505), and Heintzelman in his diary notes somewhere between 2 and 3 p. m., "We are hoping for McDowell and Porter." (Board's Record, p. 611.)

McDowell by the way had put King's division under Hatch in support of Reynolds until it was withdrawn and brought up near stone house by General Pope's own orders. (G. C. M. Record, pp. 94 and 221.)

The message at 4 p. m. by Lieut. S. M. Weld to Generals McDowell and Pope that Morell would be strongly engaged (G. C. M. Record, p. 129), was one calculated to allay suspicion and lead to the belief that petitioner had been trying to engage the enemy.

Instead of that the corps was put in concealment and no measures for *attack* projected until about 6 p. m., and then the only contemplated movement was by two regiments supported by two others. (P. XXXIII, Board's Record.)

Petitioner says that after Lieutenant Weld was sent at 4 p. m. this message was sent:

Gen'l McDowell or *King:* I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. *How goes the battle?* It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
M. G. Vols.

The context shows it must have preceded the last-cited dispatch to McDowell announcing a determination to retreat to Manassas, and thus more widely separate the wings of the army.

The *second* dispatch of petitioner, declaring his determination to retreat, was as follows:

[No. 36.]

August 29th, 1862.

Generals McDowell *and King:* I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. I will communicate with you. Had you not better send your train back?

F. J. PORTER,
Major-General.

It is the one which caused the amiable, kind-hearted President Lincoln, when he read it, to say the petitioner deserved death, because without a stroke even to help our Army which appeared to be retiring from the firing of an advancing enemy, he himself announced *his* determination to withdraw to Manassas, still further away from the direction the petitioner assumes the firing was taking.

1648 On the trial, in 1862, General Pope testified that he received this one *direct* from petitioner between 7 and 8 p. m. (p. 31, G. C. M. Record), and had retained it among his papers.

As his own and petitioner's headquarters were each at the unobstructed and open Sudley Springs road, and as petitioner knew where his headquarters were from his own aide, Weld, and Capt. Douglas Pope, he probably received it within half an hour after it was written—that being the time of travel between the two stations.

As to the *first* dispatch of petitioner to McDowell, expressing an intention to retreat, the latter has said before this Board that his *impression* is that he received it after the day was over (Board's Record, p. 809). This is at variance with Heintzelman's diary. General McDowell was at Pope's headquarters on the evening of the 29th, soon after the receipt by the latter, *direct* from petitioner, of the *second* dispatch (to McDowell *and King*), and was shown it by General Pope; hence his present impression (G. C. M. Record, pp. 22 and 24).

It is asserted by petitioner that the fact of the discovery by General McDowell among his papers of the dispatch dated 6 p. m. (next to be cited), in which petitioner reports he failed in getting Morell over to him, is conclusive proof that Major General Pope's 4.30 order had not then come to petitioner's hand.

It must not, however, be forgotten that the 6 p. m. dispatch was *not* to General *Pope*, but General *McDowell*.

It was a report under his previous instructions. It was not an explanation to General *Pope* why he, petitioner, did not move into action at once. It gives the impression, however, that he is trying to do something.

He said, "I am trying to get a battery, but have not succeeded as yet." If he meant a rebel battery, his preparations for assault were certainly not such as indicated any great force in his front. If he meant he was trying to get a Union battery, he had certainly six on duty with him.

If at six o'clock he was trying to take a rebel battery, why did he not make the effort four hours before? His efforts, we know, went no further than writing and sending an order.

According, therefore, to his own admission, this petitioner permitted between three and five hours to elapse before he made report to General McDowell of what he had been doing.

Was it a report based on fact?

Is there any proof in this case that any part of his corps that day "wandered over the woods" in the vain effort to get through, or did petitioner do it himself?

The answer is, there is no such proof.

Another thing to be noticed is, that the petitioner in some of these dispatches puts in the name of General *King*, although it is in evidence that early in the morning he, petitioner, was informed that General King had gone to Centreville, sick, and that Hatch was in command of the division, and that he himself gave General Hatch orders that the division that was King's should follow him.

The following is the 6 p. m. dispatch, which petitioner now says was a *duplicate* of the one reporting he had been wandering over the woods and

wanting to know *how goes* the battle. This statement, from what has just been said, is apparently not borne out by the facts:

Gen'l McDowell: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so, artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I
1649 believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. *I have no cavalry or messengers now.* Please let me know your designs; whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

F. J. PORTER,
Maj. Gen. Vols.

Aug. 29—6 p. m.

The inquiry again arises, is *this* report founded on fact? Did he make any efforts, sustained or vigorous, to get Morell over to the right, or did Morell wander about the woods for a time with his division?

The answer is, he did neither. His assumed difficulties in the way of sending messages is answered by noticing where his headquarters were—right at the open and direct Sudley road to Pope's headquarters, then at Buck Hill.

Notice, however, that even at this hour (6 p. m.) he reports the enemy *coming down on his front*, so that it is plain Longstreet could not have been there in full force deployed by 11 a. m.

Further, why did this petitioner leave this report until 6 p. m., when McDowell had ordered him to attack about noon?

If McDowell did not give him an order to attack when he was with him, which was not countermanded, and petitioner was no longer subject to those orders, why did he report he had attempted the very thing McDowell said he did order him to do?

But there is something more in this dispatch which requires comment.

Petitioner says in it, "I have no cavalry or messengers now."

Was this true? Let us look into it.

The following is the evidence of Bvt. Brig. Gen. Jno. P. Taylor, then captain commanding squadron First Pennsylvania Cavalry, and others of his squadron.

The Board will recollect that he testified to coming down from Gainesville that very morning when General Ricketts' division left it, coming down this very Manassas and Gainesville road that the petitioner was to go up on, down here to the Sudley Church road and to Manassas Junction, and there met the head of petitioner's column starting back under the orders that General Pope had given him. Now, at this point in his testimony, we have got Bvt. Brig. Gen. Taylor back with a squadron up to Dawkins' Branch, at head of petitioner's column. His evidence is as follows (Board's Record, p. 905):

Q. Where did you bring your squadron to a halt?—A. The day was warm; there were frequent halts made, I presume. I can scarcely say the distance that we marched; it was some miles when the command halted. There was an engagement going on a little diagonally to our front and right; that was some time in the after part of the day.

* * * * * * *

The Witness. We remained there until after night. The engagement continued on until after dark; there was heavy infantry firing and artillery. We were with the advance with Morell's division, and I remember distinctly after halting my squadron was formed in front of us, there being some skirmishers thrown out immediately in our front. The enemy turned and fired two pieces. One of the shots fell immediately in our front. We moved a little to the left, and my command remained there until the command moved in the night.

Q. Then you got to the point where General Porter's corps was halted on that day?—A. We were in the advance with Morell's division when it halted, but the point I cannot say. We did not reach Gainesville.

* * * * * * *

Q. What enemy, if any, did you see in your immediate front?—A. We could

1650 A. We could not tell what they were, but there was infantry heavily engaged at sundown. They were cheering and yelling, and there was musketry rising from the trees where the firing was.

Q. Was that in your front?—A. To the right of our front—diagonally across. It might have been a mile, or near two miles.

Q. From what time in the morning did you hear the sounds of battle?—A. We heard cannonading during the day, all day, and there had been some the day before.

* * * * * * *

Q. Did you know what your squadron was ordered to report to General Morell for?—A. The order was to report for orderly duty; that was the substance of the order.

Q. Were you behind any ridge or hill?—A. I don't recollect any hill right in front of us, and I recollect seeing an engagement in sight, and it seemed to be descending ground.

Q. What sort of an engagement did you see?—A. Infantry and artillery.

Q. How many infantry engaged?—A. I could not tell—the firing was in woods. We could see the smoke of the musketry rising above the trees, and could hear the cheering and yelling, as if a charge were being made.

Q. What time of day was that?—A. Near sundown; perhaps after sundown.

* * * * * * *

Q. What number of troops did you suppose to be engaged, from what you saw or heard—a large army, a division, a brigade, or a regiment?—A. There was a brigade at least engaged, and there may have been a division.

Q. Could you see the rebel troops?—A. After it began to get dusk we could see the flashes of their muskets.

Q. See the Federal troops?—A. No, sir; could see the smoke of the musketry and the flashes of the muskets.

Q. You laid in that field all that afternoon, did you?—A. During the time that we lay there I cannot say how long; we were there until dark.

Q. What did you do then?—A. Went back in the night.

Q. Where did you go then?—A. We moved back in the direction of Manassas with the same command, and on the next day, the 29th, I was under General Griffin's command, and at Centreville he ordered me to——

Q. On the next day, the 29th?—A. On the 30th. Went back during the night, and at some time on the 30th this command halted at or near Centreville. We were ordered to encamp and tie our horses in a clump of woods a little to the right of Centreville, in order that any orders that were given us they could send.

Q. What did you say in reference to a skirmish line that was being thrown out by General Porter—was there any on the 29th?—A. My impression is there was a skirmish line in front of us, and that is all that was in front of us. There were no Federal troops in front of us.

Q. Did your squadron go on skirmish duty?—A. No, sir; it did not.

* * * * * * *

Q. What was the number of the squadron you had with you?—A. I could not tell you the number; we might have had 50 men and may have had 75 men. Our number was originally about 90 men.

* * * * * * *

Q. I understand you to say that you laid idle, doing nothing, from the time you halted until you left there that night?—A. No, sir.

Q. Did not go upon skirmish duty?—A. No.

Q. Were not sent on any duty to carry dispatches?—A. I have no recollection of any.

Q. Or perform any duty at all that you can recollect?—A. No, sir. I got this information from a diary that I kept at the time.

1651 Capt. *R. J. McNitt*, First Pennsylvania Cavalry (Board's Record, p. 913), testified as follows:

Q. Did you see any enemy that day?—A. No, sir; not, to the best of my knowledge. There were a couple of artillery shots fired when we were in that neighborhood. Towards evening on that day I saw smoke from infantry firing, and cheering of infantry apparently about sundown, along in the neighborhood of sundown.

Q. What direction was that from where you were?—A. That appeared to be a little to our right, I should think.

Q. Was there any action then going on between any of the troops of your corps that you were with there and the enemy?—A. Not as I recollect.

Q. Did you hear any other cannonading during the day? If so, where?—A. We heard some scattering cannonading through the day, but it appeared to be a good distance off, over towards the Warrenton pike.

* * * * * * *

Q. Did you do anything up there?—A. Not very much.

Q. You have no recollection of having done anything?—A. Not a great deal. We remained there until we turned and came back again.

Q. Were you mounted or off your horses?—A. When we stopped, we generally got orders to dismount and rest our horses. If we did not stop for half an hour we dismounted.

William H. Ramsey, private Company B, First Pennsylvania Cavalry, testified as follows (Board's Record, p. 914):

Q. Do you know of any battle going on on that day? If so, where was it?—A. Yes; there was heavy infantry firing to our right and front towards the evening, and artillery firing during the day.

Q. Could you hear anything else which would indicate an action besides the musketry?—A. Yes; cheering; both rebel cheering and our cheering.

Q. Were your command used for anything on that day after you came to that halt? If so, what?—A. Not to my knowledge. There was not a man used, to my knowledge.

John Hoffman, private Company C, First Pennsylvania Cavalry, testified as follows (Board's Record, p. 915):

Q. Did you hear any firing that day?—A. Heard some firing on the right.

Q. What kind of firing?—A. Artillery and infantry.

William H. Bayard, private Company C, First Pennsylvania Cavalry, testified as follows (Board's Record, p. 916):

Q. While you were there at that point, did you see any enemy in your front?—A. Well, no; I did not.

Q. Did you hear any firing?—A. There was some firing down to the front and the right.

Q. How far off?—A. I judge it was along a mile or a mile and a half; something like that.

Q. What was the firing, infantry or artillery?—A. Infantry and artillery both.

William Reddy, private Company C, First Pennsylvania Cavalry, testified as follows (Board's Record, p. 917):

Q. While you were at this place, where were you halted with this body of infantry, did you see any enemy in your front? If so, what was it?—A. Not in front exactly, but on our right in front.

Q. About how far away?—A. About a mile, or a mile and a half.

Q. Was there any firing on your front that day?—A. Not on our front, but there was to our right.

Q. What was that firing?—A. Artillery and infantry firing.

1652 Q. Was there anything else by which you could tell that there was an action going on?—A. Not in particular, any more than the firing I heard off to the right.

Q. Did you see any artillery in your front that day?—A. I don't know whether there were two pieces or one, but anyway there were from two to four shots fired. I could not tell which.

Q. Where from?—A. From the enemy's side.

Cross-examination by Mr. BULLITT:

Q. Do you recollect what time that firing occurred—that infantry and artillery on your right?—A. Early in the afternoon; toward evening.

By the RECORDER:

Q. How long did you hear that artillery firing to your right?—A. All the time we were out there.

The evidence of Brevet Brigadier General Taylor and men of his squadron would be sufficient as to whether there were any available cavalry there, but on the original trial, Col. *E. G Marshall*, Thirteenth New York Volunteers, a witness for petitioner, said: "Whilst my command was being got into line prior to my going on this duty, my brigade was behind some others. *General Porter had sent some dragoons* of ano-

ther regiment to the front, and my brigade was waiting in the road to get into position" (G. C. M. Record, p. 191), and on General McDowell's court of inquiry petitioner himself swore he had on the road up to Dawkins' Branch a small cavalry escort (Board's Record, p. 1010).

The presence of this cavalry would, of course, contradict the assertion of petitioner in his report that he had none, and it became necessary, in view of the fact that he had borrowed orderlies from Colonel Schriver and General Pope, to show he had none.

Accordingly Maj. Gen. *G. W. Morell* was recalled as a witness by petitioner, but he did not recollect (Board's Record, p. 968).

Then Captain *Augustus P. Martin*, formerly petitioner's chief of artillery, was called, who "saw no cavalry except a few orderlies." (Board's Record, page 1127).

In the closing arguments here, petitioner, through his counsel, has ventured the explanation substantially that he did not know of this cavalry, and did not think they were there; but it must not be forgotten that the petitioner moved up with Morell to Dawkins' Branch with the head of the column where the cavalry were, and himself ordered out skirmishers.

At or about 6.30 p. m., *half an hour* after he had reported to McDowell he had neither cavalry nor messengers, he sent a dispatch (No. 38) to Morell, in which he said, after ordering him to put his men in bivouac for the night, "*I wish you would send me a dozen men from that cavalry.*" (G C. M. Record, p. 153.)

Lieut. *Stephen M. Weld*, then aide-de camp to the petitioner, also testified on this subject as follows (Board's Record, p. 262):

* * * * * * *

General Porter sent out some cavalry skirmishers. They were halted on the side of the hill facing west. The cavalry crossed the plain at the foot of this hill and went into the woods, not a great distance in, nearly as I can recollect; I saw them going in a little distance.

Thus it appears plain that the petitioner, in reporting he had no cavalry, in his knowledge reported that which had no foundation in fact.

Assuming for argument that he did not know he had a squadron of cavalry at his front, the statement itself shows how little he knew what was being done at the head of his column nearest the enemy.

1653 The fact of the previous non-production by Major-General McDowell, until the request of this Board, of the three dispatches received from petitioner, has been made the subject of animadversion.

The acknowledgment of receipt on an envelope usually fixes time of receipt; but neither the government nor petitioner have been able to produce any such record in this present investigation, except in the solitary instance of Lieut. E. P. Brooks.

Petitioner's witness (Board's Record, p. 281), Major Ruggles, swears that at General Pope's headquarters it was customary to receipt dispatch on the envelope and return it by bearer, and yet petitioner has exhibited none such or proved contents of *alleged* missing reports of his.

Singularly enough, the petitioner has produced here eight or ten dispatches which he either did not have or did not recollect of on his trial or when he was a witness before General McDowell's court of inquiry. In fact, he did not then recollect even having given an order to Morell to " attack" with two regiments supported by two others.

FORCES OF PETITIONER AND CO-OPERATING FORCES.

It may be desirable, right here, as showing some of the inconsisten-

cies to which I have referred, to allude again incidentally to Piatt's brigade, which the petitioner, in his opening statement, declared was not with him.

Substantially, we find, in looking at Assistant Adjutant-General Locke's evidence before this Board, aside from what General Sturgis and General Piatt have specifically testified to on the subject, that they were there; that he (Locke) saw them at the intersection of the Sudley and the Manassas and Gainesville roads marching to the rear.

Then Locke says that he was not aware that they had been "assigned to us" at that time; but, on page 454, he admits, on further examination, that they were "attached."

Griffin, in his evidence on the original record, also mentioned them being there; and we have seen introduced here by General Sturgis a dispatch that he received that very 29th of August from the petitioner, while there with him (Board's Record, p. 717), ordering him at daylight, August 30, to march off and follow the corps when they were ordered to join General Pope.

By reference to the maps it will be found that from Bristoe Station up to Gainesville there was a *direct* road. There was also another road up, via Milford, which ran into this Manassas and Gainesville road, and so on up to Gainesville, to the left of Thomas Nealon's.

The evidence of Capt. G. H. Dobson and of Prof. G. L. Andrews, of the United States Military Academy, is to the positive effect that Major-General Banks' corps were in Bristoe Station from the 28th up to and including the 29th and 30th, part of the 30th, at least.

To contradict that has been brought here Brevet Major-General Gordon, of the United States Volunteers, to say that, instead of the corps being at Bristoe, they were a mile and a half further away, toward Warrenton Junction.

By referring, however, to the record of stations of the corps during August in the official monthly report of Major-General Banks of the men he had and positions, dated August 31, 1862, now in this record, as an exhibit filed in the Adjutant-General's Office November 12, 1862, we find that the evidence of Professor Andrews (Board's Record, pp. 1095 and 1096) and of Captain Dobson is particularly confirmed
1654 by the statement that the several brigades and divisions of General Banks' corps were in Bristoe, having arrived there on the 28th.

Now, on the 27th, two days before the battle, as appears by one of the petitioner's own dispatches (No. 20, p. 90, petitioner's opening statement), he was ordered to hold himself in constant communication with General Banks; and that very morning, the 29th, General Sturgis had come from a position in the rear of General Banks up to and joining the petitioner at the front, reporting to him there near Dawkins' Branch.

It is also in evidence (of Brevet Major-General Gordon) that at Bristoe Station the cannonading and sounds of battle could be heard distinctly, and that they were anxious as to the result (Board's Record, p. 1214). These are confirmatory statements connected with the evidence of Captain Dobson himself. (Board Record's, p. 1134):

George H. Dobson, called by the Recorder, and examined in the city of New York on the 23d day of November, 1878—present, the Recorder, and Mr. Maltby, of counsel for the petitioner, and the petitioner—having been duly sworn, testified as follows:

Direct examination:

Q. Where do you reside?—A. Baltimore, Maryland.
Q. What is your occupation?—A. Lumber merchant.
Q. Were you in the military service of the United States in August, 1862; if so, in

what capacity?—A. As captain of Company A, Third Regiment Maryland Volunteer Infantry, Col. David P. De Witt.

Q. With what rank did you leave the service?—A. I left the service as captain.

Q. Where were you on the morning of Friday, August 29, 1862?—A. At Bristoe Station, or in that vicinity.

Q. To what division, brigade, and corps did you belong?—A. Second Brigade, Prince; Second Division, Augur; Banks' corps. It was either Prince or Augur at the time you mention in command; one was captured and the other wounded.

Q. Do you know of any movements of your regiment, brigade, and division on that day; if so, what were they?—A. I believe on that day our regiment with some other troops, I don't know how many, were moved in the direction of Gainesville; it was given out that they were to go to Gainesville, as I understood.

Q. At the time?—A. Yes; I think it was given out that they were going to Gainesville.

Q. At what time did your regiment and those other troops leave Bristoe Station?—A. I could not say exactly. I could tell you what time they halted and about the distance they marched, so you could form some idea of the time. I believe they halted about half past three or four o'clock—between three and four o'clock—and the distance was about three or three and a half miles.

Q. In what direction?—A. Said to be in the direction of Gainesville. I was simply a line officer; I had no opportunity, as a general officer would have, of knowing those things.

Q. Of knowing what?—A. Of knowing where we were destined.

Q. What direction did you take on leaving Bristoe Station?—A. We took the direction of one or two roads that led from Bristoe Station towards the enemy's front that is what we understood.

Q. Now as to the points of the compass, the road that you took?—A. I could not tell from my knowledge then.

Q. Northeast or southeast?—A. I could not tell from the direction of the compass at that time.

Q. At what time did you say you halted?—A. Between three and four o'clock.

Q. What then occurred, after halting, within your knowledge?—A. To me individually?

1655 Q. Yes; state all.—A. A gentleman came and invited some of the officers of the regiment to take dinner with him in the neighborhood.

Q. Was that to the front or rear of the position in which you were halted?—A. A little to the front of us.

Q. Go on and state what you then did, and what sort of a place it was that you went to?—A. I was one of a number who accepted the invitation, and when I got to his house it was too late for dinner; he had had his dinner, but he gave me something to eat. I was then, to the best of my recollection, inside of our own lines; our pickets had been thrown out upon the road a piece. When I got through eating, our pickets were driven in towards our regiment, and I was inside the enemy's lines; they fired at me as I came out, three or four shots. I escaped and went back to the regiment.

Q. Then what was done?—A. I think we went back to Bristoe Station.

Q. About what time in the day was that?—A. I could not tell you exactly; it was late in the day, between four and five o'clock, when I went up there, I suppose.

Q. What description of force of the enemy was it that drove in our pickets?—A. I don't know; I suppose the cavalry videttes that were stationed on the road when we came out. We did not see our pickets driven in; the house sat back from the road some distance; simply cavalry videttes that had dismounted and tied their horses to the fence-posts.

Q. The enemy's cavalry?—A. Yes, sir.

Q. On which side of the road was this house as you went up?—A. On the right of the road as we went up, to the best of my memory.

Q. Did you see any artillery?—A. No, sir.

Q. Did you know, or were you informed at the time, of the purpose of this movement of these troops out in this direction?—A. No, sir; I had no means of knowing that except from hearsay at that time. I do not recollect that I ever heard any object at all.

* * * * * * *

Q. As to the number of regiments, as near as you can recollect, how many regiments were there?—A. If I am not mistaken, there were the whole of our brigade of infantry and a Maryland battalion, the Pernell Legion.

* * * * * * *

Q. How long had your brigade been in Bristoe at this time, the 29th of August?—A. I think they came there either on the night of the 27th, or early on the morning of the 28th; I have had the impression that it was the 27th; I am not positive.

Q. What was the strength of the corps on that day?—A. General Banks' army corps?

Q. Yes.—A. We roughly estimated it at 10,000 troops; that was the general idea that prevailed with us at that time.

* * * * * * *

Cross-examination by Mr. MALTBY:

Q. Who commanded your brigade on the 29th?—A. I think the colonel of the One hundred and eleventh Pennsylvania, Steinberner.

Q. Who commanded that division?—A. I think it was General Greene.

Q. What is his first name?—A. I don't know; he was commanding the brigade before General Augur got wounded.

Q. What regiments were in your brigade?—A. The One hundred and eleventh Pennsylvania, One hundred and second New York, one Ohio regiment, and our own, Third Maryland, and the Fourth and Sixth Maine Batteries.

Q. That all?—A. I think so.

Q. In which brigade were you?—A. Second.

* * * * * * *

Q. On the 29th, when you made this march, as you supposed, in the direction of Gainesville, how was your regiment occupied before you marched?—A. Simply at rest.

1656 Q. What caused you to think that you moved in the direction of Gainesville? You say it was given out; who gave it out?—A. It was generally talked of in the mess that I messed with; that is the information that I got.

Q. You had no information from superior officers?—A. Yes; the mess that I messed with were all my superior officers.

Q. With whom did you mess?—A. Messed with the field and staff officers of the regiment; they were my superior officers at that time.

Q. Was your regiment the leading regiment?—A. I think it was the leading regiment on that occasion; we were known as the second regiment in the brigade; I think it was the leading regiment at that time.

Q. What causes the impression that the whole brigade was there with you at your advanced position that day, in the direction of Gainesville, as you understood it?—A. I only judged from the body of troops that were marched up; I do not say positively that the whole brigade was there.

Q. What causes the impression?—A. The cause of the impression was the large body of troops; it was quite an imposing string on the road—a couple of thousand men, perhaps.

The petitioner has sought to induce us to believe that Wilcox's division of Longstreet's special command was shoved down from the north of the Warrenton pike into the neighborhood and to the rear of D. R. Jones' division, because of some movements of the petitioner. But when we come to look at the record of what the petitioner did during the day, we find that he did not do anything, that he made no tentative movement of any description until six o'clock, when he gave an order which was not carried out.

Thus we are obliged to look to some other quarter for the explanation of Wilcox's division being shoved down there; and we find it in the movement of this brigade of observation of General Banks up in the direction of Gainesville.

This affords a slight indication as to the position I have taken here that General Lee during that day was merely occupying a *defensive* position, not with a view to assault in any sense whatever, because the position that General Banks held upon his right flank was one which, if he, Lee, had not held on to Gainesville and kept his forces where he could put them into position if necessary interposed between Gainesville and the direct road from Bristoe to Gainesville, and through Haymarket to Thoroughfare Gap, through which last point his, Lee's, re-enforcements were coming, he would have been in very much the position that Jackson would have been in had the previous orders of General Pope in every respect been complied with.

Therefore, I find the explanation of the movement of Wilcox's division down there to coincide with the movement of this brigade of observation up from Bristoe towards Gainesville to a point about half way between the two places.

Captain Dobson's evidence on the subject, putting this movement after three o'clock, coincides exactly with what is stated in the official report of Wilcox (of October 11, 1862, Board's Record, p. 530), that it was between four and five that he, Wilcox, was moved down there to be ready for any contingency, and what Wilcox has testified to before this Board. (Board's Record, p. 230.)

But if we assume what the petitioner would have us assume, that the fact of his (petitioner) lying along that Manassas and Gainesville road, stretched in column, all day, with a little skirmish line of one small regiment thrown out in the woods in front, was the reason why Wilcox came down to the point indicated, then we must apply the remarks of Charles Marshall, his own witness, to him (Board's Record, pp. 160, 161, 169, 170, and 171), that late in the day General Lee became perfectly satis-
1657 fied that there was no apprehension of an attack against his (Lee's) right; that he could spare him, and therefore moved back Wilcox to the north of the road to assist Hood, who was then about pushing into a severe action against McDowell's corps, because Hood required to be supported. Marshall himself also says that the occasion of Wilcox being sent south of the pike was the report of troops advancing from Bristoe, which threatened their right flank.

After Wilcox returned to the north of the Warrenton Turnpike D. R. Jones, with his three brigades, was left alone to watch the national forces on their right, as "Kemper's troops were never anywhere except just to the south of the Warrenton pike on the right of Hood; they never were *anywhere* else." (Board's Record, p. 166.)

PETITIONER'S FORCES ON THE 29TH.

Much has been said by the petitioner with reference to the condition that he was left in when General McDowell took, at the suggestion of the petitioner, King's division from the rear, and carried it up to apply it intermediately; that he was thus in almost a defenseless position; that his troops were too few to do anything, although it appears that late in the day his own commanding officer on the skirmish line, Col. E. G. Marshall, did not think more than a brigade had got on his front. Nevertheless it has been stated here with great earnestness that he could not do anything, because he had no supporting forces; that the absence of King's division left him utterly helpless; that it would have been an unmilitary movement for him to push forward against what he now assumes to have been 25,000 of the enemy, instead of the 10,000 or 15,000 that he assumed on his original trial. But when we come to look at the official returns we find that his plea or pretense here that he had no sufficient support, or that his forces were not enough, must be taken *cum grano salis*.

Sturgis had come up to him, having passed Banks' corps that very morning, and the petitioner had been directed, two days before, by General Pope, as appears in evidence, to keep in constant communication with Banks.

In looking at the official return upon muster of Major-General Banks' corps for the 31st of August, he having remained quietly all of two days without being in action, we find that General Banks reported specifically for the 31st the entire number present for duty, commissioned and enlisted, with him as 10,361 (see attached exhibit), which coincides very nearly with the rough estimate that Captain Dobson said that very morning of the 29th that the officers put upon the number of men that were there.

Even Professor Andrews, United States Military Academy, has made an estimate of, at least, 5,000 or 6,000 for duty present there at Bristoe under Banks. (Board's Record, p. 1095.)

Now, let us see what were the forces of the petitioner and the co operating forces.

Here was Banks on his left at Bristoe; here was King's division moving up the "Sudley" road to go into position, and Ricketts' just behind —Ricketts' division having, according to the petitioner, 8,000 men, King's division having 7,000.

Next let us see what the petitioner had. His assistant adjutant-general, Locke, before this Board, admits (Board's Record, p. 454) that when the petitioner marched from Bristoe on the morning of the 29th the corps was "well in hand. The next day (30th August) they appeared
1658 to be well closed up; and that the corps lost between 2,500 and 3,000 men that day."

General Butterfield thinks (Board's Record, p. 463) that the two brigades of Morell's division under him lost over 2,000 men on the 30th. The other brigade had marched off to Centreville and did not get into action.

Sykes' return (*vide* exhibits) shows that his division of regulars on the 30th lost 917 men.

At Bristoe, at 9 a. m. on the 28th of August, the petitioner previously reported to Burnside that he had kept his command well up (No. 22, p. 91, petitioner's Opening Statement).

Therefore, such being the case, his command being well upon the 29th, and well in hand, having moved but slowly from Warrenton Junction up to Bristoe and thence to the point where we have him now (31st August), in order to ascertain what his actual strength was on the 29th, let us take his *official* report that he has himself put in (Board's Record, p. 457), the official return which he made of his forces at Centreville on the 31st August, 1862, and subtract therefrom the losses of the 30th.

The return that has been put in of Piatt's brigade showed that he had on the Manassas and Gainesville road with the petitioner 824 men for duty on the morning of the 29th.

On the 31st, according to the "official return" put in here by the petitioner, at Centreville, the total enlisted of Sykes' division present for duty was 3,601 and 322 officers. From this computation I exclude those who were sick, in arrest, or confinement; but of course I include those who were present on extra or daily duty, for those men were under arms and part of the actual force.

Of Morell's division there were officers for duty and on extra or daily duty 300, and of enlisted men present for duty, or on extra or daily duty, 5,959.

In that official return he puts as part of his force 19 batteries of artillery. He had actually with him six batteries of artillery, as appears by the evidence; whether he had all the other batteries available I do not know. But I take those six batteries and average them, 19 being the total number of batteries reported, and I find that it gives an average of 12 officers and 344 men.

I exclude in this calculation 592 officers and men present sick. Thus the petitioner had present at Centreville on the 31st of August, when muster came, according to his own report, a total of 11,362; that is, including Piatt's brigade.

Now, Locke says that the corps on the 30th lost between 2,500 and 3,000. Butterfield says his *own* loss in Morell's division was over 2,000,

from the two brigades of the division under him, and he thinks those two brigades went into action with about 6,200 men.

Sykes reports 917 as the loss from his own division, whose numbers he roughly estimated on the trial in 1862 as 4,750 present on the 29th (G. C. M. Rec., p. 179). Assuming a less loss than either Butterfield or Locke have done, viz, 2,164, the estimated number found in the *nominal* unsigned report of General Pope, adding this to the number actually present on the 31st of August at Centreville at muster, and we find that the petitioner had on the morning of the 29th at his service, exclusive of sick men or men in arrest and confinement, or any but those who were present under arms ready for duty, 13,526 men.

If I add to that the difference of losses between 2,164 in General Pope's nominal report, and 3,000 as stated by the petitioner's chief of staff, there will be added nearly 1,000 more men to the computation.

1659 That this is not an unreasonable estimate, we find that ten days before, when his tri-monthly report was made by petitioner, Morell's division had present for duty 6,731, omitting those who were in arrest or confinement (*vide* exhibits), besides many absent.

Thus this petitioner, assuming as he did, in January, 1863, that Longstreet had between 10,000 and 15,000 men in front of him, nevertheless had enough men subject to his own orders to have made a movement that would have had every prospect of success.

And even if he had had less it would have been no excuse for not making a movement against the enemy that was near his front so as to prevent that enemy, if possible, from assisting the rest of their forces on another line of operations.*

If instead of taking petitioner's *official* returns offered by himself, we take the recollections of *his* own witnesses, we may form some idea as to the reliability of his "Opening Statement" (p. 5) that he had on the 29th of August, 1862, *less* than 9,000.

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* *Official returns.*

1.—Piatt's brigade, viz (Board's Record, p. 1123): Present		824
2.—Petitioner's corps. (His monthly return 31st August, p. 457 Board's Record, excluding 591 present sick, *vide* Seventh Article of War.)		
(1.) Sykes' division:		
Officers for duty and present on extra or daily duty	157	
Enlisted men present for duty	3,211	
Enlisted men present on extra or daily duty	390	
Total Sykes' division		3,758
(2.) Morell's division:		
Officers for duty and present on extra or daily duty	300	
Enlisted men present for duty	5,345	
Enlisted men present on extra or daily duty	614	
Total Morell's division		6,259
Artillery:		
Six batteries arranged on an average basis of 19 batteries reported in the corps.		
Total officers	12	
Total enlisted	344	
		356
		11,197
Add killed and wounded on the 30th August, as per General Pope's nominal return		2,164
Total present for duty under petitioner 29th August		13,361

Brigadier General Sykes, on the trial in 1862, testified that he had in his division of the Fifth Corps on the 29th, 4,750 present under arms, including three batteries of artillery. (G. C. M. Rec., p. 179.)

Brigadier-General Butterfield has said before this Board that when he went into action the next day in command of two brigades of Morrell's division, he had about 4,200 men. (Board's Record, p. 462.)

Griffin's brigade of Morell's division, with Morell himself, was then (the morning of the 30th) at Centreville. (G. C. M. Rec., p. 148.)

It had actually under arms 1,569, *possibly more*, but that is the number admitted by petitioner. (G. C. M. Rec., p. 241, and Board's Record, p. 452.)

Added to these the number Brigadier-General Piatt reported he himself had under petitioner on the 29th, viz, 824 (petitioner's exhibit, Board's Record, p. 1123), and we have a total of officers and men actually on duty under petitioner's *immediate* orders, under arms, on the 29th, of 11,343, as shown by his own witnesses.

1660 As Francis S. Earle, who was Morell's assistant adjutant-general and petitioner's witness, says that Morell told him, on the morning of the 29th, that he (Morell) then had about 6,000 men under arms (Board's Record, p. 416), this would increase the number actually present beyond the above computation, and make it 11,574.

To these should be added the squadron of First Pennsylvania Cavalry, under Bvt. Brig. Gen. (then captain) John P. Taylor, between 50 and 75 strong (Board's Record, p. 909), and corps headquarters staff and mounted orderlies.

Again, all that day there were near to this petitioner, in proper position to have assisted him if necessary in a very short time, Banks' corps of over 10,000 men, and Ricketts' division of 8,000, exclusive of artillery.

STUART'S HILL.

In the closing argument of the petitioner something was said as to this commanding promontory called Stuart's or Monroe's Hill, which has so singularly been left out of this map, but which has played such a prominent part in this argument, and which it has been sought to show had but a slight elevation, some 10 or 15 feet, above the level of the country.

As contradictory of that, we have the evidence of Bvt. Brig. Gen. E. D. Fowler, of the Fourteenth Brooklyn (Board's Record, p. 548), Capt. W. W. Blackford, Confederate engineers (Board's Record, p. 695), who speak of this commanding position; and of Jubal A. Early, of the Confederate service (Board's Record, p. 849), who said as follows, after preliminary remarks, that an hour or two after sunrise, Jackson showed him a commanding ridge about a mile from the Warrenton pike, which we know as Stuart's or Monroe's Hill:

> It was a commanding ridge, and commanded a view of all the open country in front to the "Warrenton pike," and all of the fields to my left and General Jackson's right.

And Mr. Monroe, who lives there, says that from that point you can see Manassas and Centreville, Bull Run Mountains, and Thoroughfare and Hopeville Gaps. The witnesses last brought in here by the petitioner have shown that the ridges on each side of "Dawkins' Branch," near the railroad, and for several hundred yards from each side of the railroad, can be seen from Stuart's Hill; though that is a matter of which the Board—it being a question of topography—would take judi-

cial cognizance by reference to anything that would give information upon the subject without necessarily having it in evidence, just as the Board would satisfy itself, if occasion required, as to the position of the sun or moon at a given time. It is to be regretted that the Board has not visited the country. I find, however, in my own notes, made on that hill last August from personal observation, the following remarks:

High commanding ridge; can see Carrico's, three-quarters mile; Centreville, Thoroughfare Gap, Gainesville, Warrenton pike one spot, Britts' under the hill, also Leachman's.

In the report of Col. E. M. Law (quoted by petitioner's counsel), of Hood's division, Longstreet's command, he said (Board's Record, p. 536), his brigade moved forward, commanded by Generals Longstreet and Hood, until it reached a commanding position in front of the enemy, about three-quarters of a mile from the Dogan house. That report must be taken with considerable allowance, for, according to the officer who made the statement, it would have brought them down here in the valley at the foot of the natural glacis eastward, and directly
1661 under the guns of the Union force, which he says opened on them, and far within their range. That brigade could not have gone up on to "Stony Ridge," because Henry Kyd Douglas, adjutant-general of Jackson, according to his evidence, did not appear to know of Longstreet's arrival until *late* in the day. In the position counsel would place him, Major Douglas would at once have discovered the brigade. As it was north of the pike, it possibly attained the same ridge as Cooper's battery.

The next to be considered is the method of procedure of this petitioner.

METHOD OF PROCEDURE.

Next to be considered is the method of procedure of this petitioner, and in this connection it is to be noticed:

First. That he did not hesitate to avail himself of the libels of his former senior counsel against the court that tried him; against the witnesses who gave evidence against him; against the Judge-Advocate-General who reviewed his case, and indirectly against President Lincoln himself. (Board's Record, p. 994.)

Second. That he sought before this board to continue a cross examination, voluntarily concluded by him sixteen years ago, of several who were witnesses before his court-martial, for the purpose of throwing doubt upon their statements on direct examination, when it was not possible that, after the lapse of such time, any witness could recall vividly all the circumstances then in his recollection upon which he based his statement of facts. (Board's Record, pp. 1108 and 1114.)

The history of jurisprudence will be searched in vain for such another like procedure.

Third. His conduct towards Major-Generals *McDowell* and *Pope*.

1. As to Major-General *McDowell*.

This officer's whole military career, during the eventful days of August, 1862, stands in striking contrast to the petitioner's.

He and Maj. Gen. N. P. Banks and Maj. Gen. J. C. Fremont had commanded independent corps—when Major-General Pope was called from the West—and the three corps were assembled and constituted the "Army of Virginia." All were seniors to General Pope, and McDowell was his senior both in the Regular Army and volunteers.

This, however, did not prevent him from *loyally* and earnestly, to the

fullest extent, supporting General Pope in all his plans and movements, so far as he was made acquainted with and understood them. Indeed, the petitioner, throughout this case, has endeavored to make it apparent that General McDowell was an officer in whom the commanding general, Pope, put implicit confidence.

This admission, though made for *other* purposes, shows what a *loyal* and earnest man to do his duty—his whole duty to his country—McDowell was, for the times were critical, the capital was in danger; yet, although he must undoubtedly have had those feelings which any military man would have experienced at seeing his junior put over him (which a special law permitted), yet it did not influence either his official or personal action towards his commanding general, and no dispatch can be found from him criticising or reflecting on his commanding general.

Major General Fremont asked to be relieved, and Major-General Sigel succeeded to the command of *his* corps.

1662 Major-General Banks, who was by his date of commission next in command under General Pope, and General McDowell, continued in the sphere of duty their government put them in.

The methods, for example, by which it has been sought by petitioner to throw the responsibility of not fighting on this respected officer would be a fit subject of animadversion were it not that the petitioner's case shows too many unfounded statements and contradictions in his own behalf.

One little point has been dwelt upon by him, viz, that General McDowell would not admit that Longstreet's forces were those mentioned in General Buford's dispatch, which McDowell showed petitioner at Dawkins' Branch on the morning of the 29th, as the force coming in to Jackson's aid. He holds up McDowell's own previous orders of a day or two before, in which General McDowell referred to Longstreet as pushing for Thoroughfare Gap.

This is wholly collateral to petitioner's own conduct, but is a part of a consistent plan of intentional misconstruction.

General McDowell has said that when his officers reported "Longstreet" was at a place, he himself assumed the fact and *said* "Longstreet"; when the report did not say Longstreet, but merely an "enemy," he did not say "Longstreet."

The fact that there were then no corps organization in the Confederate army, and only divisional commands, the senior ranking officers having control of wings or detached portions, is sufficient answer to this.

However, the petitioner is concluded by his own evidence in the McDowell court of inquiry, in which the petitioner then showed that he himself *had no recollection of such conversation.* (Board's Record, pp. 1009–1013.)

General McDowell *did* show him General Buford's dispatch, and whether it was D. H. Hill, Hood, McLaws, Jones, Kemper, Longstreet, Anderson, or Lee, he gave him all the information he had as to an ENEMY.

In point of fact, it is now plain it was Lee himself who came foward with this fragment of his army.

2. The next collateral point which was presented was in order to show an assumed bias or prejudice of General McDowell against this petitioner, to whom the former had previously been so good a friend.

After the unfounded statements published by this petitioner had been

distributed, the late Prof. Denis H. Mahan, United States Military Academy, appears to have written to General McDowell on the subject, suggesting the propriety of replying, and inclosing a copy of the publication.

Probably the most dignified way of doing this was the very mode adopted by General McDowell, who caused extracts to be taken from the reports of Stuart, Longstreet, and Jackson with reference to the battle of the 29th August, and published them without comment.

In looking at Longstreet's report we find he reports that at 4 p. m. the Union forces began to press forward against General Jackson, and that he sent forward some of his own command to attack.

The extract taken from Jackson's report of the battle, it is asserted, applies to the 30th; that it is so stated.

It narrates, however, that at 4 p. m. Longstreet undertook to do precisely what he said in his own report he did do.

It appears by Assistant Adjutant-General Henry Kyd Douglas' evi-
dence of (Jackson's staff) that the report was written by Colonel
1663 Charles James Faulkner, of Jackson's staff (Board's Record, p. 704), who was not present during the battles of the 29th and 30th, but made it up from reports subsequently received.

That which he ascribed to the 30th, and which General McDowell has sworn he thought belonged to the 29th, actually did have reference more to the first day's battle (the 29th) than the second, and was merely corroborative of Longstreet's and Stuart's reports, which preceded it in the little two-page pamphlet published by General McDowell at the request of his friend, the late distinguished Professor Mahan, and others, in answer to the petitioner's incorrect publications.

Longstreet's and Stuart's reports were sufficient to have been published without the corroborative extract from Jackson's, but as the petitioner has sought to turn attention from his own conduct on the 29th to General McDowell's *subsequent* acts, this explanation is due the latter.

It should be added that Jubal A. Early (Board's Record, p. 858) says that Faulkner, in writing it for Jackson, "confounded the facts in the report."

We know (Board's Record, p. 522) it was never filed by Jackson, but found among his papers.

However, when General McDowell ascertained that a claim was made that that report of Jackson applied to the 30th rather than to the 29th, it appears that he forwarded it to the Adjutant-General for the purpose of having the extracts which he had published compared with the official record as to whether those were extracts in relation to the operations of the 29th of August, as the heading to his little printed publication assumed they were.

The reply of the Adjutant-General was, as we have seen (Board's Record, p. 755), that it was "a true copy from the original report," and that there were but some slight verbal corrections to be made, taken from the rebel records.

Assuming the report has reference to the 30th, as stated, and which I have always contended and do believe applied to the 29th, nevertheless that which *does* apply to the 29th in the report is of the same state of facts, only in different language.

It is entirely collateral to this investigation, but the fact that such a thing has been brought in, as it were, incidentally, shows that the same line has been pursued consistently by the petitioner, from the time of the findings of the court-martial, of attack on all concerned.

Had he attacked on the 29th, as was *his* duty, probably these attacks would not have taken place.

PETITIONER'S CONDUCT TOWARDS GENERAL POPE.

3. The third is as to General Pope, who, it appears by the action of the 29th, was attacking, yet in the arguments of counsel we find a position ascribed to him very different from attack.

General Pope has furnished, I believe, all the information bearing on this case of petitioner within his power—his original dispatch books, his letter-books have been put by him at the service of his counsel through myself as counsel for the government.

During the course of this investigation, one of petitioner's counsel stated that General Pope and General McDowell had been "*fully examined*" on the original trial. (Board's Record, p. 106.) In the course of the argument for the petitioner, at the close, it was stated that General Pope knew but little of the actual facts.

Such being the case, and he having been *very fully examined* and *cross-examined* on the original trial, we can see the petitioner's method of procedure in asking this Board to bring General Pope here as a "government" witness, so that he may be asked merely his "opinions" (Board's Record, pp. 1016, 1018, 1020), and, after correspondence had been had with General Pope, *then* acknowledging that what they really wanted him for was to "cross-examine" him on his original evidence of 1862. (Board's Record, p. 1114.)

1664

As to General Pope's desire to further this investigation, we find that as long ago as the 18th of April, 1874, he addressed a communication to the President, upon learning that the petitioner had made a new appeal, urging the very fullest examination by a properly constituted board.

The petitioner, however, has said that his (petitioner's) appeals were unheard or unheeded; that he from the time of his conviction had sought for "justice," the indirect assumption being that the court of nine general officers which convicted him could not give him justice.

But the President of the United States (Grant) who succeeded President Johnson, and who had two of these appeals before him, gave, it appears by his own letter in evidence here, the matter his personal attention, read the evidence, and came to the conclusion that the petitioner was not entitled to any rehearing.

This conclusion is found in President Grant's reply to General Pope of the 9th of May, 1874. (Board's Record, pp. 1176, 1177.)

If this petitioner had any sort of a case when all the witnesses were alive and everything was fresh in their minds during the lifetime of President Lincoln, and if President Lincoln himself was so ready to give the petitioner a new hearing, as the latter would have us believe, why did he not put the matter before President *Lincoln?* However, the action of the only living ex-President shows that the petitioner's case received due and careful attention, that it was passed upon, and that the appeal was rejected.

General Pope's subsequent attitude towards this petitioner during this investigation has been shown in the voluntary transmission by him, for information or use of the latter's counsel, of all his original dispatch and letter books (Board's Record, p. 1215), and by the following telegrams:

FORT LEAVENWORTH, KANS., *October* 21, 1878.

To Gen. J. M. SCHOFIELD, *West Point, N. Y.:*

I have received your despatch of the seventeenth, in which you state that "in view

of the fact that the counsel for the petitioner have stated that they believe that justice to their client requires your presence here, the Board requests that you appear as a witness before them at Governor's Island next Thursday, twenty-fourth inst." In reply I have to say that if the petitioner considers my presence as a witness necessary, he should apply to have me subpœnaed as a witness for him. Only as a witness for him or for the government can I be expected, with any semblance of legality, to appear as a witness in the case. To do so on a mere request of the Board would be to place myself in a position not only false, but in every respect extraordinary and unknown to the laws of or to the practice of the civil and military tribunals of the country.

While I stand ready to appear before your Board in any position known to law or practice, I cannot appear as a volunteer witness in the case on mere request, and without knowledge whether I am called for the government or the petitioner. As you state that I am requested to appear as a witness because of the statement or suggestion of the petitioner, it is to be inferred that I am called as a witness for him; but this fact is not definitely stated, nor does your telegram convey a subpœna, but only a request. To subpœna, regularly issued, to appear as a witness for either side, I will cheerfully and promptly respond. I am entirely willing to appear as a witness in the case, and desire simply to be placed in the same relation to the Board and the parties in controversy as that occupied by all the other witnesses.

JNO. POPE.
Brig. Genl., U. S. A.

1665 FORT LEAVENWORTH, KANSAS, *October* 29, 1878.

To Major A. B. GARDNER,
Recorder and Counsel for Government, Governor's Island, New York:

I am informed by the Secretary of War, in telegram of this date, that the President declines to order me to appear or not to appear before your Board as witness, but leaves the matter to my discretion. In view of this fact and of the telegraphic instructions of the Secretary of War for the guidance of the Board, copy of which the Secretary has sent, I must adhere to the position taken in my telegram of 21st instant to General Schofield. Nevertheless, although the counsel for the government refuses to subpœna me as witness for the government, and the petitioner declines to subpœna me as a witness for him, and therefore I am subpœnaed by neither party, if the Board require any information in my power to give on any points brought out in this investigation, I will cheerfully give it either by sworn replies to written interrogatories, or, if the Board deem it necessary, by appearing in person before it for this purpose, on due notification to that effect.

JOHN POPE,
Brevet Major-General, U. S. A.

THE ASSAULT MADE UPON THE CHARACTER OF MR. BOWERS.

4. The petitioner's method of procedure is here well exemplified. The absence of any motive on Mr. Bowers' part should have protected him from the remarks in the closing argument of counsel, which, when published, as this Board has no judicial power, will be actionable.

Mr. Bowers said petitioner's headquarters, at the time, were in the earthworks at Centreville, which the latter's chief of staff corroborated. (Board's Record, p. 1043.) He said petitioner had a tent. In rebuttal some of the latter's witnesses said he had none—others a tent-fly. (Board's Record, pp. 1036, 1040.)

As Mr. Bowers is a lawyer of prominence and respectability in West Virginia, and only came here on the repeated summons of this Board, leaving, with Capt. R. McEldowney (another witness), professional engagements in the United States circuit court at Wheeling with inconvenience, he is entitled, in view of the cross-examination to which he was subjected, and the actionable language used towards him, to have this statement.

His evidence shows he never was a spy, never within the Confederate lines. He was in command of a detachment of scouts, in government service, under and with the military family of Brig. Gen. R. H. Milroy, United States Volunteers, until the latter was relieved from duty, when he again accepted a lieutenancy in the volunteers until the close of the rebellion, and was then honorably discharged. (Board's Record, p 953.)

PETITIONER'S CONDUCT ON THE 30TH.

As he was not convicted of anything he did on the 30th, while serving under the *immediate* observation of General Pope, and as the evidence offered by him on his trial in 1862, as to what he did on the 30th, was properly ruled out by the court after argument (G. C. M. Rec., pp. 118, 133, 252, and 280), I have, as I stated in my opening argument in rebuttal, refrained from going into that subject at all only from the belief that it was not germane to the case.

ANIMUS.

We now come to the consideration of the *animus* of the petitioner towards his commanding general.

In the opening statement of petitioner, all the dispatches which he cites up to the 26th August, 1862, show that he evidently con-
1666 sidered General Pope's army as yet a separate command, with which he was merely to co-operate.

Before the petitioner came under General Pope's immediate command he was under Maj. Gen. G. B. McClellan's.

On the 25th, when he began to get near that army, he began to be troubled with doubts, and in his dispatch to Maj. Gen. A. E. Burnside (marked No 8) says "*Does General McClellan approve?*"

And again on the same day to General Burnside, who was his immediate commander, he asks (No. 10) "Are my arrangements satisfactory?"

When, on the 26th, he found no forces of the enemy in front of him, below on the Rappahannock, but his own corps in close proximity to General Pope's, he wrote to the latter to know where his command would be most useful.

That night he received his first order from Major-General Pope.

It was dated 7 p. m., signed by Major-General Pope, and requested the petitioner to "Please move forward" in a certain direction.

This at 11 p. m. petitioner acknowledged, and said his (Pope's) instructions would be obeyed as rapidly as possible; that his forces had been disposed of under instructions from the General-in-Chief. (Board's Record, p. 316.)

Possibly this reply had something to do with the query of General Pope to his chief of staff, Col. George D. Ruggles, whether petitioner would fail him. (Board's Record, p. 280.)

The petitioner asserts (on page 19) that he "had used extraordinary exertions to join General Pope," but this pretense of zeal fails in the light shed on this transaction by his own witness, General Burnside, when the latter swore on the trial (p. 185, G. C. M. Record) that the accused "used no energy or dispatch in joining the command of General Pope, and in his military movements in that direction, beyond those which his duty as an officer required him to use."

We now arrive at the point when he has received his first order from General Pope, and is told by the latter that he, Pope, "does not see how a general engagement can be postponed more than a day or two" (No. 16), and orders him to *hurry up* one of his divisions *as rapidly as possible*, and to put the other where he can "easily move to the front."

This is not what the petitioner apparently expected. He had no desire or intention to fight the new campaign under any but his old commander. He shows he is troubled at what he has already done, for he sends a dispatch to Major-General Burnside, in which he says:

> Have just received orders from General Pope. * * * I shall move up as ordered. * * * Inform McClellan, that I may know I *am doing right.*

What had the commanding general of the Army of the Potomac to do with deciding this point if the accused was in General Pope's command?

On the other hand, if that commander's opinion was asked in order to ascertain whether he had been rightfully ordered by General Pope, how much could he have considered himself as a subordinate previously?

The truth of it is, the petitioner, as was testified to by General McClellan (on p. 197, G. C. M. Record), joined General Pope's command because he received orders *direct* from Major-General Halleck, General-in-Chief, so to do.

General McClellan further swore that "when the accused was making his efforts to leave the Peninsula, he did not know that he was to be placed under the immediate command of General Pope."

The petitioner admitted his hopes and wishes in his opening statement (p. 72) before this Board when he said he "thought that
1667 the main body of the Army of the Potomac was landing at Aquia Creek" [that is just where General Lee seems to have had an idea that the main body would land and get in his rear on the 29th] "and would join the Army of Virginia by the line of the Rappahannock; that the Army of the Potomac and the Army of Virginia, under their respective commanders, McClellan and Pope, would co-operate and be manœuvered by one head—General McClellan."

Said he: "I did not then know or suspect that it had been decided that General McClellan was to have nothing to do with the campaign."

In another place (p. 80) he said that before he left Harrison's Landing he was informed that General McClellan would command both armies.

It will be a subject to be considered in the light of other dispatches how far this petitioner permitted his wishes as to commanders to control his official conduct.

The next dispatch to be noticed is as follows:

No. 19.

WARRENTON, 27, p. m.

To General BURNSIDE:

* * * * * * *

Everything here is at sixes and sevens, and I find I am to take care of myself in every respect. *Our line of communication has taken care of itself, in compliance with orders.* The army has not three days' provisions. The enemy captured all Pope's and other clothing; and from McDowell the same, including liquors. No guard accompanying the trains, and small ones guard bridges. The wagons are rolling on, and I shall be here to-morrow. Good night!

F. J. PORTER,
Major-General.

This dispatch shows the feelings which the petitioner had towards the Army of Virginia, which already had been enduring fatigue and privations in the effort to protect the national capital.

The historian has yet to note the causes why General Pope's line of communications was interrupted at Manassas Junction and his supplies destroyed while he himself was holding an extended line of defense under superior orders.

Whether it was a corps or army commander who was responsible is foreign to this investigation.

However, this petitioner knew his special allusion, in the last-quoted dispatch, to General McDowell, was and *never* has been founded in fact.

That dispatch was followed by No. 20 (G. C. M. Record, p. 99):

[No. 20.]

(*From Warrenton Junction, August* 27, 1862—4 P. M.)

GENERAL BURNSIDE, *Falmouth, Virginia:*

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause of alarm, though this may cause it. McDowell is moving to Gainesville, where Sigel now is. The latter got to Buckland bridge in time to put out the fire and kick the enemy, who is pursuing his route unmolested to the Shenandoah or Loudoun County. The forces are Longstreet's, A. P. Hill's, Jackson's, Whiting's, Ewell's, and Anderson's (late Huger's) divisions.

* * * * * * *

Everything has moved up north. I found a vast difference between these troops and ours, but I suppose they were new, as to-day they burned their clothes, &c., when there was not the least cause. I hear that they are much demoralized, and needed some good troops to give them heart and, I think, head. We are working now to get behind Bull Run, and I presume will be there in a few days if strategy don't use us up. The strategy is magnificent and tactics in the inverse proportion. I would like some of my ambulances. I would like also to be ordered to return to Fredericksburg, 1668 to push towards Hanover, or with a larger force, to push towards Orange Court-House. I wish Sumner was at Washington, and up near the Monocacy, with good batteries. I do not doubt the enemy have a large amount of snpplies provided for them, and I believe they have a contempt for the Army of Virginia. *I wish myself away from it, with all our old Army of the Potomac, and so do our companions.* I was informed to-day by the best authority that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take care of itself. Pope says he long since wanted to go behind the Occoquan.

* * * * * * *

Most of this is private, but if you can get me away, please do so. Make what use of this you choose, so it does good.

Don't let the alarm here disturb you. If you had a good force you could go to Richmond. A force should at once be pushed on to Manassas to open the road. Our provisions are very short.

F. J. PORTER.

After telegraphing, this dispatch will be sent to General Burnside.

This was followed by another dispatch, viz:

BRISTOE, 9.30 *a. m., August* 28, 1862.

My command will soon be up, and will at once go into position. Hooker drove Ewell some three miles, and Pope says McDowell intercepted Longstreet, so that without a long detour he cannot join Ewell, Jackson, and A. P. Hill, who are, or supposed to be, at Manassas. Ewell's train, he says, took the road to Gainesville, where McDowell is coming from. We shall be to-day as follows: I on right of railroad; Heintzelman on left; then Reno, then McDowell. He hopes to get Ewell and push to Manassas to day.

I hope all goes well near Washington; I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st., *and I hope Mc's is up also.* You will hear of us soon by way of Alexandria.

Ever yours,

F. J. P.

General BURNSIDE, *Falmouth.*

On the very morning he received General Pope's order to move on Centreville (29th August), stating that it was very important that he should be there at an early hour in the morning, that a severe engagement was likely to take place and his presence necessary, he sat down half an hour later and sent this dispatch to General Burnside (p. 103, G. C. M. Record):

BRISTOE, 6 *a. m.*, 29.

To General BURNSIDE: I shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners. Banks is at Warrenton Junction; McDowell near Gainesville; Heintzelman and Reno at Centreville, where they marched yesterday, and Pope went to Centreville *with the last two as a body-guard*, at the time not knowing where was the enemy, and where Sigel was fighting within 8 miles of him *and in sight*. Comment is unnecessary.

The enormous trains are still rolling on, many animals not having been watered for fifty hours; I shall be out of provisions to-morrow night; your train of forty wagons cannot be found.

I hope Mac's at work, and we shall soon get ordered out of this. It would seem from proper statements of the enemy that he was wandering around loose, but I expect they know what they are doing, which is more than any one here or anywhere knows.

* * * * * * *

Comment on this almost seems needless, but it explains possibly why he did not give Pope a hearty support in that day's action.

He pretended to have no confidence in Pope; and in his appeal to the President of 10th October, 1867, p. 53, he went on to say that if his dispatches to Burnside—

Manifested confidence in General McClellan and a distrust of General Pope's ability to conduct the campaign (as claimed by the prosecution), they but expressed the opinion pervading our Eastern armies.

1669 General Burnside, a witness for the accused, in his testimony (p. 181, G. C. M. Record), said he

Saw in Porter's telegrams exactly what he heard expressed by a large portion of the officers with whom he happened to be in communication at the time—a very great lack of confidence in the management of the campaign. It was not confined to General Porter.

The petitioner's late counsel, Reverdy Johnson, in the pamphlet to which I have referred, in undertaking to excuse or explain his (petitioner's) telegrams to General Burnside, said (p. 31):

Not only was the honor of the flag involved, but the very safety of the capital. *Porter saw that both were in danger by what he believed to be the incompetency of Pope.*

Here, I submit, is one of the reasons of the accused's fatal inaction on the 29th August, 1862.

He apparently does not appear to have received any replies to his dispatches, here quoted, to General Burnside or to others criticising the campaign.

The moment he found himself actually under Major-General Pope's orders and joined to duty with his army, and his late commander not at the front, he says:

I wish myself away from it, with all our old army of the Potomac, *and so do our companions.* * * * If you can get me away, please do so.

If he really spoke in this dispatch for his general officers, some explanation might be found for the advice they gave on the receipt of the 1 a. m. order, though, as has been shown, petitioner did not make known to them its urgency.

All the time he is looking for General McClellan and hopes his "lucky star is up."

Even when he gets an order, at 5.30 a. m. on the 29th August, to move forward at once, as a "severe engagement was likely to take place," he does not do so until 7 a. m., and, meanwhile, writes a long note to General Burnside, in which he says:

I hope Mac's at work, and we shall soon get ordered out of this.

All these expressions taken together afford, in connection with his acts, a clew to the motives of the petitioner. He was not satisfied with the commanding general that the government had placed over him. His service, therefore, was reluctant and of the most dilatory character.

Either really or apparently he pretended to distrust his then commander and did trust another, whom he was hourly looking to see come forward, for he said that very morning he *hoped they would make connection soon* (G. C. M. Record, p. 119), and he did not propose to help Pope in any of his serious movements where he could possibly avoid it.

At any moment Sumner's or Franklin's corps might arrive, and with them the commanding general of the Army of the Potomac from Alexandria.

The countermarches and singular movements of petitioner in coming up to Warrenton Junction from the Rappahannock have not been specially inquired into, but apparently exhibit hesitation or delay. (Board's Record, pp. 842 and 948.)

The evidence of Asst. Surgeon Wm. L. Faxon, Eighteenth Massachusetts Volunteers, Morell's division, is noticeable.

Sykes' division, which first arrived on the 28th August from Warrenton Junction to Bristoe, was moved beyond it and put in position. Morell's division came up later in the day into Bristoe.

Dr. Faxon testified as follows:

By RECORDER:

Q. At what time did you arrive at Bristoe Station with your regiment?—A. I judge about the middle of the afternoon.

1670 Q. During that time did you see General Porter?—A. I saw General Porter only as I crossed the run at Bristoe.

Q. Where was he at that time?—A. He was at a little house on the left hand of where I crossed; that is, on the side toward Washington. He and his staff were at a little house; I think it was a kind of peach orchard; I think most of them were sitting down.

Q. Describe what you saw and heard, so far as General Porter was concerned?—A. As I crossed the run I heard General Porter make this remark: "Go tell Morrell to halt his division;" "I don't care a damn if we don't get there." I am very particular about those words, because I recollect them, and I have spoken of them.

* * * * * * *

By Mr. CHOATE:

Q. You put this and that together and thought it referred to getting to Bristoe, didn't you?—A. No; I never have drawn any conclusion, except that the man had some motive in his mind, in view of the disaster that followed; because a general commanding a division if he had a motive of that kind should have kept it to himself.

Q. In view of what disaster that followed?—A. Second battle of Bull Run.

* * * * * * *

Q. What other circumstances were there that impressed General Porter's remark upon you at the time it was made?—A. I said in view of the disaster that followed, our defeat at the battle of Bull Run, and the general talk that everybody made about the displacement of McClellan and the appointment of Pope. That was a matter of common report in the army as well as everywhere.

The next noticeable utterance of petitioner is at Dawkins' Branch, August 29, where, when petitioner of his own volition, after the fire of the few cavalry skirmishers of Stuart's, sent out Col. E. G. Marshall, he directed the latter *not to bring on a general engagement.* (Board's Record, p. 678.)

Then follows the remark of petitioner when General McDowell gave him his orders at the Manassas Gap Railroad, to put his troops in there, that he could not do so without getting into a fight. (G. C. M. Record, p. 85.)

After this comes petitioner's remark to General Sturgis, when the latter, after McDowell had gone and petitioner was back to his column, called his attention to the glint of a gun, showing a force, that he, petitioner, *thought he was mistaken.*

Then follows petitioner's orders to General Sturgis, after that section did open on him, for Piatt's brigade to march back to Manassas Junction and take up a "*defensive position.*" (Board's Record, p. 712.)

Then comes his, petitioner's, orders to Morell to put back and conceal in the bushes all his division, after the feeble effort to move to the right. (No. 31, p. 95, petitioner's opening statement.)

Before and after this, we have the conduct of petitioner in putting his headquarters two and five-eighths miles to the rear of Dawkins' Branch, from between 12 and 1 p. m. up to-night. (Petitioner's statement, p. 40.)

Next to be noticed is the conduct of petitioner in not making known to General Sykes, who was with him for hours, the fact of receipt of the 4.30 order to push into action at once. (G. C. M. Record, p. 178.)

Lastly, on that day we have this series of telegrams, in two of which the petitioner expressed a positive determination to withdraw to Manassas without having attacked, viz:

General McDOWELL: The firing on my right has so far retired that, as I cannot advance, and have failed to get over to you except by the route taken by King, *I shall withdraw to Manassas.* If you have anything to communicate please do so. I have sent many messengers to you and General Sigel and get nothing.

F. J. PORTER, *Major-General.*

An artillery duel is going on now—been skirmishing for a long time.

F. J. P.

1671 General McDOWELL or KING: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the *battle?* It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
Major-General Volunteers.

General McDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

F. J. PORTER,
Major-General Volunteers.

AUGUST 29--6 p. m.

AUGUST 29, 1862.

Generals McDOWELL and KING: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in strong force on this road, and as they appear to have driven our forces back, the firing of the enemy having advanced and ours retired, *I have determined to withdraw to Manassas.* I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy—

Although at this very time he was away back by the Sudley road, where he had a direct road perfectly open and unobstructed to General Pope's headquarters, or to any of those generals who were there—

They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going. Had you not better send your train back? I will communicate with you.

F. J. PORTER, *Major-General.*

These, by themselves, afford evidence which might be deemed conclusive that the petitioner was disloyal to the commanding general, Pope.

Of this, however, we are not left to conjecture, for during his trial, when the official reporter, Wm. Blair Lord, after the day's adjournment, called on him on business, accompanied by Mr. Waterman L. Ormsby, this petitioner, in a moment of unguarded impulse, declared he "was

not loyal to Pope," but, as testified to by Mr. Ormsby, he "was loyal to McClellan." (Board's Record, pp. 651 and 968.)

These witnesses, the one for many years and now the official reporter of debates in the House of Representatives, and the other for fifteen years superintendent of transferring in the Continental Bank Note Company, indicate, additional to their characters and appearance, the amount of trust to be reposed in their accuracy.

Nothing which can be said in this argument as to this language can add to the force of that said by Mr. Lord in the private letter he wrote at the time to his wife on the subject, which is as follows (Board's Record, p. 980):

> I have been a little bothered about General Fitz John Porter. I had to go to his room on Monday to get some papers that belonged to the court that he had had to copy. One of the reporters of the New York Times was along with me. While in the room, after some conversation, General Porter made the remark, "Well, I wasn't loyal to Pope; there is no denying that." Now, that is really the charge against him before the court-martial—that he did not do his duty as an officer before the enemy, and that he did not act rightly towards General Pope, his commanding officer. General Porter said what he did in the privacy of his own room, without thinking of the effect of his words. After thinking it over, I have concluded it better not to say anything about it now, though I would not promise as much for that newspaper correspondent.

1672 Mr. Lord, from motives of delicacy, did not communicate information of this interview to the Judge-Advocate-General until the evidence in the trial in 1862 had been closed, consequently it was not used.

This petitioner, judging from his utterances and acts, on the 29th August, 1862, was apparently willing "to leave Pope to get out of the scrape," an alternative proposition which it appears from the record of this Board (p. 750) he was not the only general officer of the Army who was prepared to adopt.

The petitioner's remarks, as overheard by Mr. B. T. Bowers, then lieutenant First Ohio Battery, on the 31st August, that he did not wish any honors or courtesies shown to General Pope (Board's Record, p. 955) were not a necessary piece of evidence to show his *animus*.

The conduct of this petitioner in the eventful days of the August campaign of 1862 has now been reviewed.

He cannot say that he has not had the *utmost* latitude in the production of anything favorable to his many-sided case.

Punishment in the systems of laws prevailing in enlightened nations is not so much to visit condemnation on the individual as to deter others from committing the like offense.

Gladly would General Washington have pardoned Adjutant-General John André, of the British army, in October, 1780, but an example was necessary for the future safety of the state.

It must not be forgotten in the examination of the details of petitioner's case that the strength of the evidence against him lay much in the consideration that it presented a series of acts having throughout a character in common and bearing on their face a common motive; that they began upon his being placed under the command of a particular officer; that they continued so long as he remained under that officer; that they exhibited a half-compliance, non-compliance, or positive disobedience to both the letter and the spirit of successive orders received from that officer; and that his hostility to that officer was clearly proven, both in his dispatches and utterances.

Again, what may be called the method of his defection looked to a retirement of the army in which he found himself to a point in rear of the field of operations, where, by the fact of this retirement, and the

assumed failure of the general under whom he was serving, he might come under another command; and his own private dispatches confirmed this aspect of the case, since they showed this to have been his ruling thought and desire.

It was, in short, the consistency of these acts with each other, their contrast with the previous conduct of the same officer, and the key to their purpose furnished by his own words, that trebly indicated his accountability, and bore the minds of the court to his conviction.

Of the less flagrant of these acts, perhaps of every one except his turning his back upon the field on the afternoon of the 29th and failure to push in, it may be said that this or that, had it stood alone, might, without knowledge of his *animus*, have been covered up or explained away so as to have left him the benefit of a doubt.

It was more difficult to do this with several taken together.

It was impossible to do it with all.

I have now concluded the duty put upon me, a duty among the most disagreeable in all my professional experience.

In performing it, I have felt that the honor of the service required every exertion on my part to ascertain the facts, so that the President, the historian, and the public might read this case and know it had been as fully investigated as possible, in the absence of any judicial or quasi-judicial power in the Board.

1673 ADDITIONAL ARGUMENT OF MR. MALTBY, OF COUNSEL FOR PETITIONER, AS TO STRENGTH OF PETITIONER'S CORPS.

During Mr. Choate's argument in behalf of petitioner, Mr. Maltby said that he desired to introduce certain documents as to the strength of the petitioner's corps, as reported in memorandum returns of the 1st of September, 1862, and the accompanying letter of transmittal from the Adjutant-General of the Army, dated November 5, 1878.

The Recorder said that the proposed papers were memorandum returns subsequent to the muster which do not show what disposition is made of those not present, as does the petitioner's muster-roll called the tri-monthly return, of the day before. The Recorder said that he had obtained copies some time before for his own information, and knew that the petitioner also had them, but did not consider them of any special importance or he would have introduced them, and that they were summarized at page 1125 of the Board's Record.

The papers are as follows:

HEADQUARTERS OF THE ARMY,
ADJUTANT-GENERAL'S OFFICE,
Washington, November 5th, 1878.

General F. J. PORTER, *New York City, N. Y.:*

SIR: In reply to your letter of the 1st inst., requesting to be furnished with copies of the returns, etc., from which the information dated the 11th ulto. was compiled, I have the honor to enclose herewith the copies referred to.

The morning report of the 5th Corps dated Newport News, Va., August 31, 1862, it is believed should be August 20th for the following reason: The date has evidently been *changed* from Aug. 20 to Aug. 31, by whom it is not known. The headquarters of the 5th Corps left Newport News August 21st, and they could not therefore have been there on August 31st. This fact was not discovered at this office until the 1st inst., when copies of the papers in question were furnished Major Gardner.

I am, sir, very respectfully, your obedient servant,

E. D. TOWNSEND, *Adjutant-General.*

HEADQUARTERS SYKES' DIVISION,
Centreville, September 1, 1862.

Present strength of division as follows:

1st brigade:	
Commissioned officers	62
Enlisted men	1,329
Aggregate	1,391
2d brigade:	
Commissioned officers	52
Enlisted men	1,236
Aggregate	1,288
3d brigade:	
Commissioned officers	28
Enlisted men	495
Aggregate	523
Batteries of 1st and 5th Art'y (3 batteries, 12 guns):	
Comm'd offi'rs	9
Enlisted men	278
Aggregate	287
1674 Total commissioned	151
Enlisted men	3,338
Aggregate	3,489

HEYWARD CUTTING,
Lieut. & A. D. C., A. A. A. G.

ADJUTANT-GENERAL'S OFFICE,
Washington, Nov. 5, 1878.

Official copy. Original received at this office in 1865 with records of discontinued commands.

SAM. BRECK,
Asst. Adjutant-General.

HDQRS. MORELL'S DIVISION,
Centreville, Sept. 1, 1862.

LT. COL. LOCKE,
Asst. Adjt. Gen'l:

I would respectfully submit the following report of this division, present for duty this date:

	Off'rs.	En. men.	Aggregate.
1st brigade:			
18th Mass	14	268	
13th N. Y	14	146	
25th "	11	142	
1st Mich	5	148	
22d Mass	9	157	
2d Maine	13	160	
	66	1,021	1,087

	Off'rs.	En. men.	Aggregate.
2nd brigade:			
14th N. Y	16	284	
4th Mich	14	274	
9th Mass	20	359	
62nd Pa	22	413	
32d Mass	12	303	
	84	1,633	1,717
3rd brigade:			
17th N. Y	9	106	
16th Mich	15	97	
83d Pa	11	90	
44th N. Y	7	88	
12th "	9	150	
			382
Berdan sharpshooters	9	225	234
Martin's Battery	6	129	135
Hazlett's "	3	109	112
Aggregate			3,867

Very respectfully,

FRANK S. EARLE, *A. A. A. G.*
GEO. W. MORELL, *Maj. Gen'l.*

Full returns of casualties have not yet been received.

ADJUTANT-GENERAL'S OFFICE,
Washington, November 5, 1878.

Official copy. Original received at this office in 1865 with records of discontinued commands.

SAM. BRECK, *Asst. Adjt. General.*

1675 Subsequently Mr. MALTBY said: While the subject is up about the return and the amount of force that General Porter had, we had better settle it at once.

The Recorder takes a monthly return for August, 1862, which was received at the Adjutant General's Office October 1, 1866, and bases thereon his calculations, by which he concludes that General Porter had under him, including Piatt's force, 13,361 men available for duty August 29, 1862. I have made a very careful examination of that return, and have arrived at a different result. I take from that return the number of men present for duty with General Morell, and the number of officers, which aggregates a present for duty of 5,635; Sykes' men present for duty, with officers, aggregated 3,352; an aggregate of both divisions present for duty of 8,987. Including Piatt's brigade of 824, it makes 9,811 men, based upon the return upon which he makes his calculation.

Now, the distinctions between his calculation and mine are these: he includes 624 men and officers of Morell's division and 406 men and officers of Sykes' division, making 1,030 men, who are noted upon this as being detailed for extra duty. Of course those men were not available for a battle, so that they did not belong to the men who were ready for duty in action, and therefore should not be included. He adds to those the returns of the losses of the next day, which were of Morell 1,247, and of Sykes 917, making in all 2,164. Those losses were not accounted for at all in this monthly report, but were left out of the report, and return was made as if there had been no losses. He also adds 356 men from Hayes' artillery, thinking that those batteries which were with General Porter were the Hayes artillery, and not included in the return for the divisions of Sykes and Morell. But Hayes' artillery was not present with General Porter. They are placed in this return in

red ink. They were not there; they had not come up, and these other six batteries did not belong to it, but were included in this division return, as I shall show by the division returns of September 1. So that it makes a difference between my calculation and his of 3,550, and it is made up entirely of these men on extra duty, and by adding the losses, and by adding 356 men of the Hayes artillery.

Now, look at the corroborative evidence which I am able to introduce showing that my calculation is about right. The field returns for September 1, 1862, have not been introduced in evidence, except in that letter. The Recorder thought it was not necessary to introduce the detailed returns. The letter which was introduced gave the aggregate. But I should prefer to have the whole thing upon the record, for it shows the care with which these returns were made to impress upon the minds of those who read the idea that there was accuracy as far as could be had in making these returns. Here are the returns by brigades and regiments, and the field return of September 1, Morell's division, including batteries attached, and including Berdan's Sharpshooters—everything, of course, makes the aggregate 3,867. Sykes' division, including everything, makes an aggregate present of 3,489. The losses of Morell's division we agree are returned as 1,247. Add that to the aggregate of the September 1 returns, and we have for Morell 5,114 men. Sykes' loss we agree was 917. Add that to the aggregate by the return of September 1, 1862, and we have 4,406 men. The grand aggregate present was 9,520. Then add Piatt's, which is 824, and we have as the total amount of General Porter's force present August 29, 1862, 10,344.

The difference between my calculation based upon the monthly return of August, 1862, and my other calculation based upon the return
1676 of September 1, 1862, between which times there was no action, results in a difference of only 533; whereas the difference between the Recorder's calculation, based upon the return of August, 31, 1862, and my calculation, based upon the return of September 1, 1862, is 3,017. Now, there must be an error somewhere. My slight variance of 533 between my two calculations may be accounted for in this manner: it is quite probable that the returns of losses of killed and wounded and missing were not made up accurately as early as September 1; they are not dated. The returns of those present for duty are dated; and there is a chance for a slight variance between those two dates; some of the wounded may have come back fit for duty or something of that sort.

Now, that the monthly return of August 31, 1862, does not exclude the losses, but includes all the men available on the 29th of August, and does not include the losses of the 30th, I think is very readily proved by comparison of that return with the consolidated morning report of the Fifth Army Corps, commanded by General Porter, at Newport News, August 31, 1862. Now, we agree, and it is stated to us from the Adjutant General's Office, that that date, August 31, had been put in over an erasure by somebody over the date of August 20, and the corps were actually at Newport News on August 20. This return from Newport News, it is true, refers alone to General Morell; and I take the various numbers of the enlisted men shown on this return and compare them with that of August 31, 1862, for the month concerning alone General Morell's division, and I find them so similar, that it shows there could have been no great losses between the two days, the 20th and the 21st, according to the figures, though we know there were actually 2,000 men lost. That will be shown in this manner: We find by the Newport News return that there were present for duty an aggegate of enlisted men of 6,159; whereas on the 1st of August there were present for duty

5,959, which makes a difference of exactly 200 men; whereas we know that the loss of enlisted men was 1,200 in that corps.

I now take the absent of enlisted men at Newport News, and I find that they are in all—those without authority and those by authority—7,241. On the return for the month dated August 31 we find there 6,798, a difference of only 300 or 400 men. Then the total present and absent—the aggregate, officers and all—I find by the Newport News return to be 14,242. By the other return—the Centreville monthly return of August 31—I find them to be 13,677. The difference is not great enough. It shows that that action could not have been accounted for at all.

Now, look further. See what is printed upon the tri-monthly returns: "The tri-monthly returns required for the Adjutant-General's Office will be made from the department or army corps headquarters punctually on the 10th, 20th, and last days of each month, from the *latest returns* obtained at those headquarters at those dates." Those italics are not printed upon the monthly return, but the same rule evidently governed them at that time. They did not have the returns of the wounded and missing on the 31st of August. The field-return of September 1 shows that they had rested a little while, and then had counted heads, and found out the wounded and missing and present. Of course they made up that return of August 31 by what returns they had at the time, which were what men were present on the 29th, and not what were present on the 31st of August. I think that shows very plainly that Porter had between 8,000 and 9,000 men, exclusive of Piatt.

1677 THE COUNSEL FOR THE GOVERNMENT. I have already *very* fully stated in my argument the manner in which my two separate results were obtained; the

First being merely arithmetical, from petitioner's own "official" returns introduced by himself; and the

Second being taken exclusively from the sworn statements of his own witnesses, and each showing a *much* larger force, by several thousand, than the learned counsel has just stated as present under petitioner's *immediate* command on the 29th, exclusive of King's division of McDowell's corps.

Now as to the *first* of the results—against which he has just argued—as I have said before, I take the consolidated monthly return of the Fifth Army Corps, as given in detail by the MUSTER on the 31st of August, 1862, as put in evidence by my learned friend (Board's Record, p. 457), and I look to see how many men are actually reported as *present for duty* (9,583) *over the signature of the petitioner and his assistant adjutant-general*, and how many officers are in like manner reported as present for duty (470), and how many *are present* on extra or daily duty (1,066 men and 29 officers), for, being in the field, the latter of course forms part of the combatant force; I add them together.

That gives for the 31st 11,148 officers and men; I then add the actual losses for the day before, 30th August, killed, wounded, and missing.

In adding the losses of the day before I merely take the "nominal" report, as it is termed, viz, the unsigned report found in General Pope's report (as printed by Congress, pp. 155, 162, and 168), which puts them at 2,164, as the total loss of the corps for the day before, although Major General Butterfield and Assistant Adjutant-General Locke, petitioner's witnesses, have testified here to the loss on the 30th as being between 2,500 and 3,000 (see my argument), making a difference of several hundred more present. I take, however, the *lowest* figure, the *nominal* report of 2,164 found in General Pope's report, and add that number to

the number reported for duty on the 31st August, and we have 13,312 as present of the corps on the morning of the 30th.

Add to these Piatt's brigade of 824 and subtracting the reserve artillery not there, and I submit, on the *petitioner's own reports*, the number indicated by me as present on the 29th under his immediate command, 13,361, is reasonable and just.

We know from the evidence, and I believe it cannot be disputed, that the number of troops the petitioner had under arms in the Fifth Corps and Piatt's brigade, on the morning of the 30th, was the same, or possibly a very little less, than he had on the 29th.

We also know he reported his command on the 28th as "well up."

When we go back to the tri-monthly return for the 20th of August, we find that the whole division of General Morell alone amounted to some 13,000 or 14,000, absent and otherwise; an aggregate present and absent at Newport News, 21st August, of 14,242.

That was the tri-monthly report for August 20, 1862, from Newport News. The clerical error, as it is called, is in regard to the date of that tri-monthly, being noted as the 31st instead of 21st, to which I invited attention when I introduced the paper.

That tri-monthly shows that Morell's was a very large division; and it was and is my line of reasoning, aside from petitioner's *muster* return, above mentioned, that there was nothing improbable, but quite the reverse, in supposing that ten days later there were enough men in that division present on the 31st of August to make up the number actually reported by the petitioner in his official monthly return, which
1678 was a MUSTER roll filed with the Adjutant-General 1st October, 1862, and a duplicate, the one introduced before this Board in
1866.

That is a question for the Board to decide for themselves. It is not, however, reasonable to suppose, that upon formal muster the petitioner would have reported any as "*present for duty*" on the 31st who were previously killed, wounded, or missing. (Articles of War, Nos. 5, 7, 8, 12, 13, 14.)

Mr. MALTBY. We will take the numbers most adverse to us by my figuring, which I think, perhaps, is the most reliable, being based upon the returns of the wounded, missing, and so forth—the returns of September 1—and it shows 10,344.

The RECORDER. I ought to add that I have actually excluded, in my compatation for the 31st, 591 officers and men, deliberately reported by petitioner in his muster roll for that day as "present" in the field sick, whose sickness was due probably to the exertions of the day before.

Mr. MALTBY. They were non-combatants.

1679

ARGUMENT OF MR. CHOATE, COUNSEL FOR THE PETITIONER.

Mr. CHOATE said: If the Board please, I will, as briefly as I can, conclude the argument on the part of the petitioner, and reply, so far as it may seem necessary, to what has been presented on the part of the government. I say as briefly as I may, for I have been reminded of the advice that was given by Dr. Breckenridge to a class to whom he was lecturing on the subject of the efficacy of prayer, as compared with its

length, when he said, "Young gentlemen, I beg you to remember that the Lord knows something."

I am going to argue this case upon the assumption that this Board knows something of the evidence which has been taken, and which they have been engaged in receiving and examining for a period of six months and especially something of the laws of war and of the rules of military conduct. We, who represent General Porter, pretend to know very little of the latter subject, and confide entirely in the ample knowledge of the whole subject which this Board possesses.

At the outset, I wish to express our obligations to the learned Recorder for the ingenious and instructive argument which for the last two days he has been laying before the Board. It is exactly that which we could have wished should be done, namely, that the strongest argument that could possibly be made upon all the facts should be presented to the Board on behalf of the government before you proceed to decide upon the evidence. In my judgment, the best argument which could be made on behalf of the government, from the facts presented, has now been made.

More than that, we owe a considerable obligation to the Recorder for the diligence which he has manifested in searching for and procuring evidence supposed to be adverse to the cause of General Porter. A large part of it consists, in my view, of matter very strongly favorable to the cause of the petitioner, and matter which we never could have found by any search or power on our part. He has gone further than the mere gathering of facts. Every rumor, every suspicion; yes, I may say, every piece of scandal detrimental to the interest or conduct of General Porter, in relation to the events of the 27th and 29th of August, 1862, has now been presented before you. And if, as I hope, notwithstanding all this, your judgment shall arrive at a conclusion favorable to his cause, it must always be said that the search has been fully exhausted, and that everything that could possibly be brought into the balance against him has been thrown in.

As it seems to me, much of the closing argument of the Recorder has relieved us of a great deal of responsibility and anxiety and labor; because, upon the main question of this case, as I have always regarded it, namely, the conduct of General Porter on the afternoon of the 29th of August, he has now seen fit to present, for the first time, an entirely new view, something altogether different from all that has heretofore been claimed, and not only different, but absolutely antagonistic to it. If we may accept him as the authorized mouth-piece of the government, or of the prosecution, or of the adverse side which we are to resist or
that is to resist us, so that we may take the propositions that
1680 he now presents as final against us, we may dismiss from our
minds all the claims that have heretofore been made in relation to the decisive events of that important day. For when we come to discuss that part of the case, I think we shall be able to demonstrate to the board that the claim of fault on the part of General Porter, as now presented, is not what General McDowell claimed, either on the former trial or upon this examination. It is not what General Pope claimed, either then or in any of the numerous and varied presentations of the case that he has since made. It not only is not the same, but is absolutely hostile and repugnant to all those. And, if wha the now insists upon does not bear the test of examination, that branch of the case will be entirely ended.

We are entirely satisfied with the view that the Recorder has presented; but in what light it places those two great generals, who have,

up to this time, stood in the attitude of accuser and of champion of the accuser, it is not for me to say. It does seem to me, however, that it has been a little ungrateful on the part of the learned Recorder, for he had a full view of the results of what he was presenting and of its necessary effects; ungrateful, for instance, to General McDowell, who, according to his statements made upon oath in this investigation, has aided the Recorder in this case, and composed, for his consideration and use in the preparation of it, somewhere from six to twenty written and printed papers. The general intimated at Governor's Island that he thought he was on trial. I did not then understand the true purport of the remark. But now it appears that he was on trial in the mind of the representative of the government, and that by him he has been tried and found wanting. He has thrown him overboard in this case, and turned him out of court with the utmost ignominy, as I think I shall demonstrate to you. And so of General Pope; one would have supposed that the representative of the government, now presenting this case for final consideration, would have found in some of the many, the almost countless publications of General Pope on this subject, hostile to General Porter, an inkling of the claim that he has now made. But he, too, is treated with contempt and scorn by this prosecution, as I shall show. Now, it will be my unexpected duty, which I shall perform with alacrity, to defend these generals; and I shall be glad that while defending General Porter I can defend General McDowell, also, from what seems to me to be the attempt at complete stultification, which is made against him by the learned Recorder. Whatever grievances we may have against that gentleman, however much we may have reason to complain of his attitude in the previous stages of this case, I do not think any one on our part has ever dared to suggest, or would be willing to intimate that he was guilty of the stupidity and ignorance which is inevitably fixed upon him, if you feel called upon to adopt the view of the learned Recorder, presented the day before yesterday for the first time in the whole history of this case. By what motive is he actuated? Is it to ascertain the truth? Does he believe now, as his argument necessarily concludes, that all the charges that were made on that branch of the case before the court-martial, and upon which General Porter was condemned, that all these serious charges of sixteen years ago were invalid? Does he desire to bring General McDowell into disrepute? Does he wish to convert this controversy into a third Bull Run for that distinguished general, as if two would not suffice? I shall, in its proper place, ask the careful attention of this Board to the view which he has set forth, because, as it impresses my mind, it stamps this whole prosecution with contempt, and demands for it the scorn of every intelligent and honest man.

1681 Again the learned Recorder said—an unnecessary straw thrown into the scale against General Porter—that he had personally changed his mind as to the petitioner's guilt or innocence; that, having come to this investigation with views favorable to General Porter, he, upon an examination of the case, had been compelled to change his mind. Well, we shall have to bear that. I do not think that it was necessary, in his official capacity, that he should seek to put that additional burden upon General Porter's back. Nor did it seem to me that the reasons that he gave for the change of his views were reasonable, or worthy of any consideration. You will recollect that he enumerated the causes for his change of mind. But as he has done this, it may not be improper for me to acknowledge also, a change of mind in regard to the case. For I must confess, almost with shame, that for more than

fifteen years I was one of those heedless and unthinking millions who took it for granted that General Porter was guilty. Not guilty, if you please, of the atrocious crimes of which he was convicted, because I never knew the exact nature of these charges; but guilty of something heinous and derogatory to his character as a soldier. I had taken it for granted, as I believe the millions of the inhabitants of this country had, that a court-martial consisting of nine eminent generals sitting in judgment upon their peer, could not have found him guilty and put upon him the brand of infamy, which is conveyed by their sentence, unless he had really committed some fearful crime. When he came to ask me to act for him in a professional capacity, I was obliged to tell him so; and he said, with a manliness which I shall never forget, that he would not ask me to act for him unless upon an examination of the record, and upon the facts that he had to present, I was satisfied of his innocence; and further even than that, for he added, that if, after taking his case, I should find, as it proceeded and was developed, any reason to believe him guilty, I should be at liberty to abandon it. Well, I examined the record. I found that the case had not been half tried; that the trial had taken place in the midst of the frightful excitement of war, when party and sectional passions were at their utmost height, when the disasters in which the war had involved the country had saturated the minds of the people and of almost all the soldiers of the country with alarm and indignation. I found that there were circumstances most unfavorable to justice in the surroundings and in the composition of the court which tried him. I found that one-half of the main witnesses cognizant of the facts had not been accessible to him or to the court at the time of the trial. I found that the most able and learned jurists of the country, in examining the case, had pronounced that even upon the record as it stood, there was no evidence fairly, upon the acknowledged principles of justice, to sustain the conviction. A personal study of the record satisfied me of his innocence, and when I came to examine his new evidence, not only did it demonstrate that he was not guilty, but that for the very acts and omissions to act with which he was charged, he was entitled to the very highest merit and commendation. So it seemed to me to be not only a high professional service, but an urgent public duty to enter into his defense, and to stand by him as long as he needed support. I say a public duty, as well as a professional service, because, in my view, this is not General Porter's case alone; it is the case of the whole Army; it is the case of every honest soldier who marches under our flag! Yes, it is the case of all the people of this country, for blighting as was the stigma which was placed upon him, it rests upon the Army and the country, too. I think I shall show you that there never has been a soldier exposed to such shame and humiliation, and there never has been an army suffer-
1682 ing from such a brand as this; and if it is undeserved by him and by the Army, why, as the President has said, it is time that it was reviewed and removed.

The learned Recorder has further said that he did not regard the fact that General Porter had been for sixteen years besieging the executive department at Washington for relief as a circumstance entitled to any consideration. But I do. I think that is the first great convincing argument of innocence which presents itself upon the threshold of this case before you look into the evidence. Why, what could have borne him up during all these sixteen years? Could guilt have done it? Suppose him to have been guilty of the crimes with which he was charged, should we ever have heard of the case any more? Should we

ever have heard of General Porter any more, except as bearing his shame to his grave as best he might? No; a guilty man would never ask for a re-examination of the charges, knowing only too well that if one-half of the proof demonstrated his guilt, all the knowledge that could be brought from all the world to bear upon the subject would only prove it blacker and deeper. Yet I suppose that General Porter, from the 21st of January, 1863, until this moment, has never had a single waking hour that has not been inspired with the prayer that he might not die until he should be able to demonstrate to his countrymen his innocence—should be able to clear his name from this infamous brand that has been put upon it, and hand it down to his children as pure and bright as he received it from ancestors of honor and renown. This conscience which has been implanted within us is a great and powerful engine for support or for destruction. It may make—Shakespeare says it does make—"cowards of us all." It may make the great and gallant general, who has sought and found a bubble reputation at the cannon's mouth, quail at the idea of coming before three of his brother soldiers simply to tell the truth. But when it takes the shape of what Virgil calls the "*mens sibi conscia recti*," the heart conscious of its own innocence, it can carry a man, as it has carried General Porter, through perils such as have never yet been found upon the battle-field, and through years of suffering and humiliation to which death itself, at any time, would have been a merciful release. So I submit to you that the fact that General Porter has been asserting his innocence, in the face of all the world, from the moment of his conviction until now, is at least entitled to be taken into consideration in passing upon the question of the guilty or innocent intent within the breast of the man, which, after all, constitutes the very gist of this inquiry.

Well, he has maintained this contest, and upon what ground has he asserted it?

The learned Recorder is pleased to say, upon the ground of newly-discovered evidence.

Why, not so entirely, if the Board please. It is on the ground that he was always innocent, that upon no facts that could ever be truly stated ought he to have been convicted. And then, upon the further fact that what he asserted upon his original trial, and what the court refused to believe, he could now demonstrate so clearly that any man who runs might read and understand, and must believe it.

Well, the learned Recorder says, why didn't he ask President Lincoln to open his case, if he had such confidence in it himself? and several questions of that sort have been asked by the learned Recorder, which imply a forgetfulness of facts, facts proved in the case on his own part. There has not been a President at the White House from the day of his sentence to this, before whom he has not laid his case; and as to President Lincoln, we expressly proved an application on the part of Governor Newell, representing the petitioner; and we have always believed
1683 that if President Lincoln had not been taken away by the bullet of the assassin, we should have had justice at his hands. But—and I beg the attention of the court to this fact—urgently as he has presented his appeal, just as urgently has it been resisted from other quarters. It is not for us to inquire or to know who has had an interest to prevent the question of General Porter's guilt or innocence being inquired into, but somebody has done it. And I rather think that the opposition has come from more sources than one. One of them is apparent upon this record: General Pope, his original accuser, has always, except upon one occasion, the sincerity of which I do most truly doubt, been resisting

the effort and inquiry, and has, down to this moment, been standing in the way of justice. I conceive that nothing but a consciousness of absolute innocence could have carried General Porter through to his present position in this case against such obstacles.

POWERS AND DUTIES OF THE BOARD.

Now, we have the first result of all these strenuous efforts upon his part, the order for the constitution of this Board. The learned Recorder, from motives that I cannot understand, and from a view of the case which he has not disclosed, has studiously undertaken to belittle the functions of this Board. Ah, he says, it is to be regretted that this Board has no judicial functions. Judicial functions! A dignified board of eminent soldiers, ordered by the President of the United States, and commanded to ascertain the truth of this controversy—for it is a controversy with sides, as it appears—and he a member of the Board, what object could tempt him to impute to it insignificance and a lack of judicial functions? I had always thought that the highest function of judicial bodies, the highest and the grandest, was the ascertainment of truth; and when it takes the shape of the ascertainment of the truth of a point of history, which involves the good name not only of a gallant soldier, but of a great army, and a great nation, human justice can attain to nothing higher. And so it did seem to me that this reflection upon the Board of which he is a constituent member was wholly uncalled for.

Again, he regrets that this Board has no power to summon witnesses, or, as he terms it, compel the attendance of witness. Well, who has been hurt by that? Who has not come that was wanted by us or by the Board? One man and one only. There is one big fish who has escaped from the meshes of this judicial net, the great general who stands behind this prosecution, holding up its arms. But is it for the learned Recorder, especially in view of the tender and confidential relations which seem to have existed between himself and General Pope, to regret that this Board has not had the power to drag him across the continent, and to place him a reluctant witness upon the stand, and have the truth drawn out of him as by the forceps of the dentist? Yet these are his reflections; these are his regrets, and I have no doubt that, as I think I shall show you, it is General Pope's regret, which the Recorder has uttered, that the suggestion originated from him, that this Board has not the power to compel the attendance of witnesses. And considering the defiant attitude in which that gentleman stands to this case, and to this Board, I think that the suggestion is cool, even for West Point, in the month of January.

I submit that this Board has the most ample powers for the discharge of the duty imposed upon it. For the one thing that we have missed, the personal presence of General Pope, I do think we shall be able to get along without. I do think we shall be able first to ascertain what General Pope's views are, and, second, to put them to a com-
1684 petent analysis by comparison with the facts as they have been proved here, just as well without his presence as with it.

AUTHORITY FOR THE BOARD.

Now, if the Board please, I wish to read the application of General Porter, and the order organizing this Board, to show what its functions are.

To His Excellency RUTHERFORD B. HAYES, *President of the United States:*

SIR: I most respectfully, but most urgently, renew my oft-repeated appeal to have

you review my case. I ask it as a matter of long-delayed justice to myself. I renew it upon the ground heretofore stated, that public justice cannot be satisfied so long as my appeal remains unheard. My sentence is a continuing sentence, and made to follow my daily life. For this reason, if for no other, my case is ever within the reach of executive as well as legislative interference.

I beg to present copies of papers heretofore presented bearing upon my case, and trust that you will deem it a proper one for your prompt and favorable consideration. If I do not make it plain that I have been wronged, I alone am the sufferer. If I do make it plain that great injustice has been done me, then I am sure that you, and all others who love truth and justice, will be glad that the opportunity for my vindication has not been denied.

Very respectfully, yours,

FITZ-JOHN PORTER.

Then follows the order of the President organizing the Board:

In order that the President may be fully informed of the facts of the case of Fitz-John Porter, late major-general of volunteers, and be enabled to act advisedly upon his application for relief in said case, a board is hereby convened by order of the President.

This is what it is to do:

To examine, in connection with the record of the trial by court-martial of Major-General Porter, such new evidence relating to the merits of said case as is now on file in the War Department, together with such other evidence as may be presented to said Board, and to report, with the reasons for their conclusion, what action, if any, in their opinion, justice requires should be taken on said application by the President.

One would think that there was an order from an unquestionable source of authority, which did constitute a judicial tribunal for one of the highest judicial purposes ever known to history.

Well, then, at the outset, questions arose how you were to proceed, and I have noticed a disposition on the part of the learned Recorder to hamper you by technical rules and restrictions; but we do not understand that there is any reason for putting fetters upon the action or power of this Board. What is it that you have to do—what is the object? Truth, is it not? Truth, and the whole truth, is the only object; and justice, pure justice, is the simple end of it.

The record of the court-martial is submitted to you first, but in connection with everything else in the nature of evidence which may be brought before you. "You are to fully inform the President of the facts of the case," so as to enable him to act advisedly on the application for relief, and to report your conclusion with your reasons. I think my learned friend, the Recorder, might have cudgeled his brains for a good many years before he could have framed an order, the scope of which would be more full and large, to enable the Board to attain the only object which this petitioner in asking, and, as I believe, the President in organizing the Board, has ever had, namely, complete and final justice.

Now, the nature of General Porter's claim, I wish it to be understood, is not for pardon but for justice only. He does not ask for pardon, as a condemned and guilty defendant, but he asserts now, as he has always asserted, his entire innocence of all guilt, and asks that that may be declared. Complete innocence, perfect, unconditional loyalty is
1685 what he asserts for himself, and what we, upon the record now before you, assert for him.

THE PRESIDENT'S POWER.

And that raises a question, I suppose, of the power of the President in this matter of the constitution of this Board. In respect to that I have a suggestion to make. At one time, when General Porter was making one of these renewed appeals for executive interference in this case,

influences, which, I suppose, were the same as have so long thwarted his application for justice, prevailed in procuring an act of Congress, which I will now read to you. It is to be found in the 15th Statutes, page 125, and is known as "An act declaratory of the law in regard to officers cashiered or dismissed from the Army by sentence of a general court-martial."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no officer of the Army of the United States who has been, or shall hereafter be, cashiered or dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment, confirmed by the Senate of the United States.

A law which appears to me to be altogether just and wise, and as you see, it bears directly on the question, if ever there was a question, of the ability of the President in such a case to restore General Porter, or any other officer in a like situation, however innocent, to the military service, unless the reappointment shall be confirmed by the Senate of the United States. Well, now, under that branch or this order, which requires you to form an opinion and to report what the cause of justice requires of the President, there may be occasion for your action; there will be, as it seems to me, in any event. If, as the result of all our labors, you find the court-martial correct on all the facts now known; if you find on all the evidence that has been brought before you that General Porter was guilty of the charges, you will so report, and that justice requires no action of the President. I think that more than that would come within your province and your duty; if you find that after all his lamentations he was guilty of all these infamous charges, you should not only report your conclusions, but that the punishment that was inflicted on him was altogether inadequate to the crime that he had committed. It would be only a just rebuke to the petitioner for vexing the ears of the country, and of the President, and of this Board, and of the students of history with his unfounded appeals. I say grossly inadequate to the crime committed, because, as it does seem to me, there never was so foul a crime imputed to a soldier in historical times as has been by this record placed upon the petitioner. I desire to call the attention of the Board to this: it is not a mere case of disobedience of orders; there have been ample cases of disobedience of orders before; it is not a case of treason, for which you can invent a motive, a provocation, or an apology; not at all. There have been other traitors. The place where we now sit was a witness to a conspicuous one; but Arnold's treason was merely an intent to hand over one of the military posts of the country to its enemies. The case of General Charles Lee has been cited by the Recorder, occurring at Monmouth, in the Revolutionary war, but that was of trifling malignity as compared with this, which was imputed to General Porter. Let me read one of these charges of which he was found guilty; the third specification of the second charge:

In that the said Fitz-John Portor, being with his army corps near the field of battle of Manassas, on the 29th August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that
1686 the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away and fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army; and did fail, by any attempt to attack the enemy, to aid in averting the misfortunes of a disaster that would have endangered the safety of the capital of the country.

Now, I challenge the Recorder, or anybody else, to find in all history a crime like that. I do not believe it is possible for any such crime to

be found related. The annals of history may be searched in vain for the counterpart of this. That he willfully, consciously, and merely to spite his commander—for that is the view in which it was presented by the learned Judge-Advocate and by the Recorder here—merely to spite his commander, did hold aloof, with his brave army corps, from the battle in which the rest of the army were engaged, with intent to sacrifice the rest of the army and bring shame upon its commander and ruin upon the country, and perhaps to hand over its capital and its very existence to its rebel adversaries. There is an instance, not in history, but in the legendary days of Rome—and in those legends we have ideal history embodied—which shows the judgment, I think, of mankind as to the proper punishment to be inflicted for such a crime. It is related that in the days of Tullus Hostilius a conquered king of the Albans, Mettius Fufetius by name, whom he had placed as corps commander in charge of one of the armies of Rome, went out with him to the contest with the Veientians, and the legend states that he stood aloof while the armies were engaged, in order that the army of Rome might be vanquished. Now you have observed that that had not the elements of crime here imputed; it was not the case of a man who had been a loyal subject and a general of his own army, but it was that of a conquered king who had been trusted with a command. What did Tullus do with him?

So when the Romans had won the battle, Tullus called the Albans together as if he were going to make a speech to them, and they came to hear him, as was the custom, without their arms; and the Roman soldiers gathered around them, and they could neither fight nor escape. Then Tullus took Mettius and bound him between two chariots, and drove the chariots different ways and tore him asunder.

And in my judgment no less than that would have been an adequate punishment of such atrocious crimes as were imputed to General Porter.

DISPARITY BETWEEN OFFENSE AND PUNISHMENT.

Now, we call the observation of the Board to the startling difference between the guilt that was imputed and the punishment that was imposed in this case. As one of the secrets of history it will probably never be explained how it could be that the court-martial regarded him as guilty of such a crime and yet merely dismissed him from service, and declared him to be forever disqualified from holding any office of honor or profit under the United States. The sentence itself confesses the injustice of the conviction. If it was for the punishment of the offender, it was wholly, as everybody sees, inadequate; but if there was an indirect purpose in that prosecution, if he was a sacrifice to the discipline of other men, of other generals, and other soldiers, that might explain a thing which otherwise is so mysterious. And perhaps the learned Recorder will not quarrel with the authority which I now cite on that subject, which is the reply of Judge-Advocate General Holt to the answer of Mr. Reverdy Johnson, from which he has cited and to which he has so strongly objected:

The wonder of military men, who understand the atrocity of Porter's offense in all its bearings, is, not that he was condemned, but that his life was spared. The court-martial might well have sentenced him to death, and they forbore to do so, in
1687 all probability, only because they felt that, as a walking, blasted monument of treachery to his country's flag, he would be a warning to others, far more effective than any voice which could issue from the depths of his dishonored but perhaps forgotten grave.

Does not the Judge-Advocate-General here reveal the true inwardness of the action of the court-martial?

If Porter was tried and sentenced and punished for the supposed crimes or apprehended crimes of other men, we can understand it. If he was sacrificed to the discipline of the Army of which he had formed a glorious part, even that, like death and wounds, is something which a patriot soldier can bear. It may be that we shall have occasion to examine that very question a little further, because, as it does seem to us, that must be the explanation of the otherwise extraordinary judgment of the court-martial. This case has often called up to public recollection and comment the case of Admiral Byng, who, in the middle of the last century, was court-martialed for a supposed failure on his part to do his utmost when proceeding with a British fleet for the relief of the island of Minorca, that was besieged by the French. He was not guilty. He, too, was a brave and gallant soldier, faithful to his country's flag, but he was chargeable with an error of judgment in not pressing the French fleet with all his power, as his brother soldiers assembled in court-martial felt that he might and should have done. There is, however, this remarkable difference between Byng's case and Porter's case: The court that declared the former innocent, condemned him to be shot, and he was shot—shot, in obedience to a supposed governmental necessity, to appease the howlings of the British mob, for the court expressly declared he had been guilty of no cowardice, of no treachery, of no evil intent. Yet, being instructed that the imperative nature of the article of war bearing upon the subject, if they found that he did not do his utmost, permitted no sentence short of death, they sentenced him; and, the king and the ministry not being brave enough to stand up against the brutal demands of the British public, he was led out and shot like a traitor. The government, in spite of the eloquent appeals of William Pitt, deliberately sacrificed him to the mob, who had burned his effigy in every town in England, and had placarded all the streets of London with the startling threat, "Hang Byng, or look out for your king!" Well, as it seems to me, to a brave soldier, Byng's fate was a light punishment compared to these sixteen years of imputed infamy and shameful humiliation which Porter has borne, and so Byng thought, for when he heard of the judgment of the court, he said, "What! have they put a slur upon me?" apprehending that they had pronounced him a coward. But when told that it was not so, that they had acquitted him of cowardice, a smile wreathed his features, and he marched to his fate as bravely as he had ever trodden upon the deck of his frigate. But this court which tried General Porter found him guilty of all these damnable atrocities to which I have called your attention, and yet failed to impose any punishment at all in proportion to the magnitude of the offense.

And now, suppose, on the other hand, after giving all weight to the judgment of the court-martial and its proceedings, you find General Porter innocent. You must proceed further under the instructions of the order organizing the Board and requiring it to report; and as a necessary part of your investigation, and especially as bearing upon the question of the weight which you are to give to the proceedings of the court-martial, the important question must be answered, how, being innocent, so far as the record discloses, he came to be convicted. Justice to Porter, justice to the country, justice to the action of the court will require at least a recognition of that question. If there were circumstances surrounding the court, or in its composition, or in
1688 the necessary haste imposed on its action by the exigencies of the service, or in the imperfect facts before them, or in the rules of evidence applied by them, unfavorable to justice, it is important to

know it—for you, for the President, for the country to know it—for the purpose of determining how much you ought to regard yourselves as constrained, as guided by their conclusions. And so, as to the action of President Lincoln, entitled in the eye of every American, in the judgment of history, to the very first merit as an authority.

CIRCUMSTANCES UNDER WHICH PORTER WAS TRIED BEFORE.

I ask you, first, to consider briefly the circumstances under which the court-martial convened, with a view to the question whether they were favorable to a just trial of the cause. If they were, it lends a support to the judgment of that tribunal which it will require all the more complete demonstration of truth on the part of General Porter now to overcome. Well, we knew that it did not need any evidence to bring before you the circumstances under which the court assembled; and I submit to you that they were most unfavorable to the consideration of such a case or to the administration of justice upon the particular questions raised. This brings into view the whole previous history of the war in Virginia, but which need not occupy the attention of this Board for more than a few minutes.

The breaking out of the war of the rebellion, as everybody knows, found this government and country in a state of absolute destitution as to preparation for war. The first efforts and struggles on the part of the government to sustain itself were of the most painful character; and particularly is this true of the history of the war in Virginia, where these transactions occurred on the 29th of August, 1862. This has a bearing upon the circumstances that surrounded this court-martial. Who has forgotten the mortification and humiliation in which the first campaign in Virginia resulted? The whole campaign, if it may be called a campaign, in 1861, exposed the government and the country to chagrin, remorse, and mortification. While the press and the people were howling "On to Richmond" with ten million voices, our arms in Virginia seemed almost paralyzed. The story of the first Bull Run and of the Federal Army waiting before the quaker guns of Manassas, is a type and a picture of the whole history of that year. Then the government, and its gallant generals who had rallied to its support, devoted themselves to the great work of preparation; the Army of the Potomac was organized, and the campaign of that army for 1862, for the next year, was set on foot. It was supposed to be the best organized and the greatest army that ever, on this continent, sallied forth, and all the hopes and all the boastful promises and expectations of the government and of the people were staked upon it. But it is not too much to say that its career was another history of disappointment and mortification. Who can ever forget the doleful stories that came from the swamps of the Chickahominy, and the palsy that seemed to rest upon the country when the final step of a retreat to the James River was taken? There were redeeming features in the view of the government of the distressing history of that period. There were two bright days: there was the day at Gaines' Mill, and that other day at Malvern Hill, when it is not too much to say that the services of the petitioner were the most brilliant of all the great and brave achievements of its record.

But that army got back to James River, and in the judgment of the government and of the country, nothing useful had yet been accomplished.

1689 Well, our hopes never failed us, at any rate, and our courage never failed us, and a new plan was resolved upon.

An Army of Virginia was organized; General Halleck was called from the West and placed in command as General-in-Chief, and General Pope, for whom the best wishes and best promises were held forth, was called to organize and command this Army of Virginia; and as the next step, the Army of the Potomac was recalled to unite with the Army of Virginia in the protection of Washington and in new projects for the conquest of the rebel Confederacy. I need not repeat to you the history of the sixty days' existence of the Army of Virginia. It was another story of disappointment and chagrin; more mortifying, more depressing than all that had gone before. There was fighting enough, there was slaughter enough, but in the public judgment there was no result. And now we come, as I suppose, to the most distressing period in the whole history of our contest with the Confederacy. Gold went up and the hearts of men went down, and shame and anger possessed the hearts alike of the people and the government. Always, in times of great distress and disaster, I think there is no exception in history, it is the natural impulse of the great masses of a nation, the irresistible impulse of the popular heart, to look out for somebody to blame; to put it upon the shoulders of somebody, for somebody must be to blame. Well, what was the key-note of this last imputed failure? I pass no judgment. I can form none in such a matter, but I am looking to the public judgment that surrounded that court.

What was the key-note of the failure? Why, it was that General Jackson and his famous rebel army, after its capture had been heralded as an absolute certainty, was allowed to escape. That was what happened, that was the crisis, that was the culminating point of national distress and mortification, and everybody inquired who was to blame.

Do you not know, does not everybody know that there are times, and that such are the times when accusation and conviction are equivalent and interchangeable terms? Well, there was another wheel within the wheel of the national distress; there were suspicions, there were charges that hung on every lip, that were believed by every other man you met in those days, that were evidently believed by the government, that there was treachery, that there was disloyalty in the Army of the Potomac, and among the generals of the Army of the Potomac, and that some proceedings were necessary. Some example was necessary that should enforce discipline and cut out the roots of any such supposed disloyalty or treachery. For myself, I believe that the whole charge was without foundation; for myself, I believe that they were all loyal, and that under any commander, as their achievements before and afterward demonstrated, they were ever willing to fight their best. But, nevertheless, this charge was made, was taken up and became a public outcry, and the necessity for something to be done that should stop or should punish the supposed offense, was in every newspaper and on every tongue. The thirst of a great nation for vengeance, for a victim, will always be satiated. Just then, General Porter was accused; the government believed him guilty; general Pope, the commanding general of the army, asserted his guilt, and General McDowell, who was next in command, supported the charge. And who, in such times, could resist such a charge?

Who does not know that in times like those the mere accusation was, from the inherent infirmities of human nature itself, almost the same thing as a conviction? The Recorder says that we bring charges against the court-martial. I disavow it. I unite with him in all his encomiums upon the distinguished gentlemen who composed that

court. I question not their conscientious performance of duty in that critical time. But they were only men, and human judgment is finite. The learned Recorder puts it most admirably, and if I had a copy of his opening address I should be under obligations to him for expressing the very idea which I wish to present in regard to that court.

It is too true that human judgment is but finite, and that there are many times and occasions when an innocent man is necessarily convicted. History is full of instances which demonstrate exactly what I mean. I mean the impossibility of preserving an unbiased judicial mind in the face of an overwhelming pressure of popular impulse or popular opinion. The greatest judges that ever sat upon the bench, the wisest and most trained minds who had made law and the investigation of disputed cases their sole province and study through a score or more of years, have been exposed to the same subtle, insidious, irresistible influence of public feeling upon them; and it is not in the least derogatory to their character as judges, but merely imputes to them that they are men. Take, for instance, Queen Caroline's case, a case which enlisted the public feeling of every man and every woman in England upon one side or the other. It is a regretted but a recognized fact that upon the questions of law raised by the facts in that case, and presented to the law lords, embracing the greatest and wisest of the judicial minds of England, they always voted upon them, not according to the law and the facts as afterwards considered, when reviewed by judicial minds, but invariably according to the dictates of that party division of the people of England with which, by tradition and by the experience of their lives, they happened to sympathize. Nobody has ever questioned the integrity of Lord Eldon or Lord Erskine. So it was in O'Connell's case, when England was agitated throughout every hamlet and household. There are times when the administration of justice in the face of this subtle, far-reaching, irresistible popular power becomes wholly impossible. And so I say that this court-martial sat in times and under circumstances which were not favorable to the administration of justice; and if any unfavorable reflections have ever been cast upon those judges or their action, I, for one, on the part of the petitioner and of my associates, disavow them all. We impute to them nothing but honest performance of duty.

THE COMPOSITION OF THE COURT-MARTIAL.

In the next place, was there anything in the composition of the court-martial that was not favorable to justice? In that respect, my learned friend, the Recorder, has seen fit to comment upon the manner in which the court-martial was organized. I think, myself, that there was an error committed, but one with which you have not to deal, and one for which the court was not at all to blame. Let me read to you the law to which I refer, the act of Congress of May 29, 1830, which was supplementary to an act for the establishment of rules and regulations for the government of the armies of the United States, passed April 19, 1806.

It enacted that—

> Whenever a general officer commanding an army shall be *accuser* or *prosecutor* of any officer in the Army of the United States, under his command, the general court-martial for the trial of such officer shall be appointed by the President of the United States.

In our present view of the evidence, as it stands recorded before this

Board, General Porter was brought to trial by reason of the accusation and prosecution presented against him by the general commanding the army of which he was a part. If the facts had been presented to the President or to the court-martial at the outset of its sessions, as they have been presented to you, that court, at any rate, would never have proceeded with the trial. But General Pope saw fit to go before that Board and say that he was not the author of the charges, that he had nothing to do with them, and so to leave the court under the impression that the real accuser and prosecutor was General Roberts, his inspector-general, in whose name they were presented.

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Now, as to the object of this law, we differ from the learned Recorder in his construction of it. We suppose that when an act says that when a general is to be tried upon charges presented by his superior general, commanding the army of which he is a part, that the court-martial shall be constituted by the President, and not by the commanding general—General Halleck in this case—we suppose it is so enacted out of consideration for the dignity of the offense and of the offender—that if a general officer is to be brought to trial upon charges involving his fame and his life emanating from such a source, no less dignified a person than the President shall appoint the court; no less impartial a tribunal than one created by him—raised, as far as human foresight can raise it, above army quarrels and army rivalries—shall be the judges who are to try him. Now, if that is the proper view of the law, suppose that General Pope had gone before the Board, and instead of swearing as he then did, that he had nothing to do with the charges, had sworn as he afterwards stated in his report to the Committee on the Conduct of the War in 1865, which I have in my hand, for there he not only boasted of having been the accuser, but confessed that he had demanded his reward for carrying the prosecution successfully through.

He said:

I considered it a duty I owed to the country to bring Fitz-John Porter to justice, lest at another time, and with greater opportunities, he might do that which would be still more disastrous. With his conviction and punishment ended all official connection I have since had with anything that related to the operations I conducted in Virginia.—(Supplement to Report of Committee on the Conduct of the War, part 2, p. 190.)

Now, let me read you a previous sentence from the same report, to show his boast:

In the last days of January, 1863, when the trial of Fitz-John Porter had closed, and when his guilt had been established, I intimated to the President that it seemed a proper time then for some public acknowledgment of my service in Virginia from him.—(*Ibid.*, p. 190.)

Suppose, now, that the President of the United States, or General Halleck, or the court-martial had known those facts as there stated by General Pope, can anything be more certain than that a court-martial, at any rate selected not by the President, but by General Halleck, would never have proceeded to the trial of the cause?

The next circumstance in regard to the composition of the court that I have to suggest, without imputing the least reflection or suggesting anything in the least derogatory to the members of that court, except that they are but men, is this—and is in the direct line of the last objection that I have made—because I do not believe that the President of the United States would ever have committed that mistake. What was it? What was the cardinal thing that General Porter was accused of? What was it that the rage of the country was to be appeased about? Why, it was letting Jackson escape, was it not—Jackson with his army, after the "bagging of the whole crowd" had been most felicitously and publicly proclaimed? Now, from the facts that have

been spread and confessed before this Board, we know that Jackson's escape was accomplished the day before that upon which
1692 General Porter is charged with dereliction. It was not on the 29th of August that General Jackson effected his escape. It was on the 28th, because then, as was supposed, they had him in a trap from which he could not escape, and General Ricketts, who constituted one division of General McDowell's corps, was stationed at Thoroughfare Gap, between Jackson and Longstreet, and General King was marching down the turnpike to Centreville, behind Jackson, so that if they had remained there, as they were ordered at all hazards to do, there could have been no possible help or relief for Jackson. But they left those positions, where it is due to General Pope to say, especially as to General King, that he was ordered at all hazards to remain, and, as was stated by General McDowell, and as everybody knows, and as the Recorder will not question, the door of the trap that held Jackson was thereby left open, and nobody remained to guard it. Not a regiment, not a soldier of our forces, intervened any longer between Longstreet and Jackson. Well, one would have supposed, who knows anything of what are the necessary attributes of a judicial mind, that the very last thing which it would occur to the power constituting the court-martial to do would have been to place General Ricketts and General King upon the court to try the offender—absolutely upright men, perfect men, as I suppose, but how could they sit as judges? How could they bring to bear the judicial element and the unbiased mind? They might themselves be tried for letting Jackson escape, and they to sit in judgment upon another man to be tried for that offense! What we say is this: That judicial impartiality under those circumstances cannot be asked of men. This law that I read was a wise one. I do not believe that the President of the United States, if he had had the organization of the court, would have organized it in the manner in which it was constituted. I do not believe that General Halleck, who did organize the court-martial, knew the fact at all. What a position in which to place those generals! I have spoken of the historical and traditional liability of the great and trained judges of courts of law to bias, to the difficulty of sustaining a judicial mind, in times of popular rage or excitement; but how much greater is the exposure of generals summoned hastily from the field for the discharge, perhaps for the only time in their lives, of the great functions of judges? Well, why was this done? The order constituting the court-martial explains it, and it is certainly a source of the utmost regret that the exigencies of the public service did require any such selection, for the order organizing the court-martial says positively that it was necessary, and that there was nobody who could possibly be spared to sit upon that court except those nine generals who did compose the court. I want to read the exact words of the order:

> No other officers than those named can be assembled, without manifest injury to the public service.

Was not that a lamentable thing, that two of the judges were thus related to the subjects that were to be tried? I doubt not that they did their best; I doubt not that they tried to be judges, but how could they be? Human nature will not stand everything, and however great they may have been as generals, or wise as men, I do not believe they could stand that. Nay, more, General King, to whose withdrawal from the rear of Jackson on the 28th, contrary to orders, is now imputed by everybody the escape of Jackson, not only sat as a judge, but had to be a witness. The exigencies of the public service not only compelled him to sit in the impossible attitude of a judge, but compelled him to take the

stand and establish the truth as a witness adverse to one of the
1693 principal aides and witnesses on the part of General Porter. Is it not asking a little too much of our poor human nature to put a man in that position? Who knows but that it was the votes of Generals King and Ricketts—who knows but that it was General King's vote alone, that turned the scales of justice against General Porter? Nobody will ever know, except the members of that court. But why do I cite all this? Because the Recorder said that the judgment of that court-martial was right, and must be accepted by you. Independent of its being right, I think we see now that it was impossible for those nine men, all of them, to act as judges. That could not be. They might sit there and record their votes, but it was impossible for them all—it was impossible for two out of thenine—in the nature of things, according to the laws of the human mind, to be judges.

Another thing, among the many circumstances unfavorable to the administration of justice by that court-martial: Was there any unnecessary haste? The Recorder says that the record shows that it took a great many days to get in the evidence. But was there any unnecessary haste in their judicial proceedings, which were required to be deliberate and slow—considering all things—looking before and after? I will read to you the order that was served upon the court upon the morning of January 6, 1863, five days before the sentence was pronounced. Before I do that, let me say that even now, after we have had the benefit of a second trial, it would be regarded as rather summary if you should receive orders from the War Department to hurry back to your respective commands as quickly as possible, and to close this case without regard to hours, because the public service required it, and that you should instantly, upon the closing of the argument, take a vote. It might be necessary, owing to the exigencies of the public service, but it would not be judicial. Now I read this order from Secretary Stanton to this court-martial:

WAR DEPARTMENT,
Washington City, D. C., January 5, 1863.

GENERAL: The state of the service imperatively demands that the proceedings in the court over which you are now presiding, having been pending more than four weeks, should be brought to a close without any unnecessary delay. You are therefore directed to sit, without regard to hours, and close your proceedings as speedily as may be consistent with justice to the public service.

Yours, truly,

EDWIN M. STANTON, *Secretary of War.*

Major-General HUNTER, *President, &c., &c.*

It was not, you will observe, justice to the accused, but justice to the public service, that the Secretary appealed to as the final motive for a hasty decision of the case.

That was served upon the court-martial on the 6th of January. Then the prosecution brought up their rear guard of witnesses, and the case was almost instantly closed that day. There were given to the petitioner three days to prepare his defense, and then what happened? Why, these generals, although they were judges, were generals first, last, and always. How could they shut their eyes to such an imperative order as that from the great War Secretary, who was in that day the master of the fortunes of the whole Army? The country was in danger, its capital was at stake; it was more important to the public service that they should get back to their commands than that they should stop to deliberate upon the evidence upon which they had to pass. Now what took place? You can form some notion of how this imperative letter operated, judging by your own proceedings here. The

1594 Board met at half past ten the morning of the 10th of January.

There was an argument presented on the part of General Porter, called the defense of the accused, which, read with even the speed of the rapid tongue of our learned Recorder, could not have been finished much before the shades of afternoon were falling, for it occupies forty closely printed pages of this record. I do not state it as a fact, because it is not in the record, but I have been informed that it did actually occupy four hours and a half, or until half past two in the afternoon. At six o'clock that court-martial had adjourned, and General Porter was already condemned and sentenced, because the exigencies of the public service demanded it; that each one of these generals should go post haste to his command. Was that a condition of things favorable to the administration of justice? I should think that even you, after you know, as you now must know, all about the case, would deem it necessary to deliberate after the arguments were concluded, and to compare the evidence with the arguments to see whether on either side they were specious and fallacious or sound and based upon the truth. You would not say, "Why, I must be off to Saint Paul by the morning train," and "I must be off to Fortress Monroe to-night," and "I must return to my neglected cadets." But you would say, "Let us look into this thing; there is a man's life at stake; the fame of an officer of the Army is involved." You would require to deliberate; and if you did receive such an order, which would be impossible in times of peace, you would remonstrate—you would refuse to decide the case without a chance for deliberation.

So it does seem to me that there are circumstances surrounding the history of that court-martial which make it only fair for us to say—and even the learned Recorder will not term it libelous—that it was asking more than human judgment, and more than human nature was master of, for them to pass judicially upon the case.

Next, as to the state of facts before them. Do you believe that the court-martial knew anything to speak of about the real facts of the case? What does a soldier, when he is looking for the movements of troops, first ask for? Is it not for a map of the country? Did they have a map? Yes, they had a map, and only one map. Well, was it a map? For there are maps and maps, as the Recorder knows. It was in the form of a map, but it was all wrong. You could not tell anything about the country from it. I do not think that General Pope and General McDowell and the other generals are so much to be blamed, as they sometimes have been, for the movements of that campaign; because this map, the same which was produced before the court-martial, was the only one they had to study, and they did not know anything about the country independent of the map. Now, what is the fact about this map? General Reynolds has said that it was all wrong. General Warren, who has made a special study of the subject, because he has been sent down by the War Department, detailed for the special purpose of preparing it, has given a correct map of the same region to this Board. I read from General Warren's evidence, at page 26 of the new record:

> That map is so erroneous that a proper answer cannot be given to the question. I cannot recognize these roads or places, or any of the streams, as corresponding to the places as they are on the map I have made, now before us.

So I think that their pole star was wrong; it was several degrees out of the way; and many a mariner might easily make shipwreck if the north star were to get dislocated and removed many degrees, or even a few degrees, from its place in the heavens. Well, did they know the great main facts of the case? Did they know that Longstreet's army had arrived on the scene of action, not whether they were in

1695 front or behind the Gibbon's woods—but did the court-martial know that they were anywhere there? Not at all. It was told them, but obviously they did not believe it. You have heard from Mr. Bullitt a discussion of the Judge-Advocate's reasons, which are to be taken as the reasons of the court and the President, and it is perfectly obvious that they utterly disbelieved and ignored the great and the leading fact in the case as it is now known. Again, did they know the real location of General Porter, with respect to Jackson's right wing, when he was expected to fall upon and consume it? Not at all. They had not the least conception of the relative positions.

Now, maps are to form an important part of my argument. I want to call the attention of the Board at this moment to one or two. There is a map which has been produced here as indicative of what was understood by the court-martial, because it was so understood by the principal witnesses who testified against General Porter as to the position from which he was supposed to have fallen back at the close of the action of August 29, 1862. It is one of those maps prepared by Lieutenant-Colonel Smith, and is a very important item in this case, because, when I come to ask you to look at the map which was before the court-martial, you will observe that the same error of fact was before that court as there is in this map in regard to the position of General Porter's force. Here it is described as the position from which Fitz-John Porter had fallen back. (See Map No. 5, from General Pope's Report to the Committee on the Conduct of the War, Map A in Appendix.)

Now, I ask the Board to look, in the same connection, at the Army map, which has been every day, until now, before the Board, and which I present as part of my argument, and shall ask to have it incorporated—to look at the errors of position committed before the court-martial, and which the court-martial itself has committed in respect to the location of the troops—I mean, of Porter's force and of the respective forces of Jackson and of Pope on the 29th. For that purpose I have here taken one of General Warren's maps (Map No. 3), the topography of which and the locations of the roads and streams upon which are all correct, and have applied upon it, according to the evidence and according to the original record, the location of the troops, as they were believed, upon the court-martial, to be. I think it will be found not without instruction, even to the Board. Here is the junction of the Manassas and Sudley road, at which General Porter is placed. Here [M 3] is where Morell placed himself, and Porter's corps deployed for a forward movement. There [M 3 or S] is where the witnesses for the government (so called), Pope and McDowell and Roberts and Smith, place General Porter. Here are the positions in which, upon the evidence before that court, the rebel army, extending to the Centreville pike, until the latter part of the day, and then supposed to extend down here [M 2], across the pike, were placed. Now, as General Reynolds says, it was only two miles, in a direct line, from this position of Porter's here [M 3] over to his own position. [These two maps, viz, the Army map and Warren's map, with the same positions projected, will be found in appendix, Maps B and C.] As the Court will observe, there was nothing to prevent, in that view, as there presented on the map before the court-martial, a flank and rear attack by Porter upon the unsuspecting right wing of the rebel army, and that was the supposition of facts upon which he was tried and convicted. Falsely placed immediately upon the right wing, and a little in the rear of the right wing, of Jackson's army, with no rebel force between, and nothing in the ground between to pre, vent him, he was found guilty of lying idle on his arms all day, and

1696 keeping out of the fight, in which, upon that showing, he might have borne an effective part. All that, on this trial, has been taken back. On this trial, the witness Smith, who placed him there by a spy-glass; and the witness McDowell, who placed him there by mistake, both admit that they had put him, at least, a mile in advance of where he actually was. It has been demonstrated, as I suppose, that the right wing of Jackson's army, which he was expected to attack, was here at the Warrenton turnpike, and that the Confederate forces, under Longstreet (25,000 strong), whose presence was proved beyond dispute, but ignored by the court-martial, extended down even beyond the railroad, and the Manassas and Gainesville road, far in front of Porter—I mean over on the other side of Dawkins' Branch—and occupying an impregnable position between his little band and the right wing of Jackson, which he was expected to attack.

Now, I desire that this other map (No. 4) of the true position, at noon of the 29th, as now proved, may be recorded as a part of my argument. I do not, of course, present it as evidence, but as argument. I believe the projection of the positions upon this map have all been honestly, conscientiously, and faithfully made; and I shall be glad if the Recorder has any objection or criticism to make that he may be permitted to make it. We do not, in this investigation, desire in the least to mislead the Board, or to vary from the record of the trial, and I earnestly hope that if the Recorder, upon that map, or upon any of the other maps that I present as a part of my argument, can find any fault, whether it is founded on fact or not, that he be permitted to find it. For, if these maps do not lie, they demonstrate that while Porter was convicted by the court-martial of not attacking the right wing of Jackson's army while that army was contending at equal odds with Pope, he was really punished for not throwing his army corps of ten thousand men in a hopeless assault upon Longstreet's twenty-five thousand, whose presence, known to him, was unsuspected by General Pope and the court-martial, and which put him as far out of the reach of Jackson's right wing as if an ocean had rolled between them. (The map last referred to, showing the positions as claimed by the petitioner, will be found in Appendix as map D.)

Well, what else was there about that court? Why, one-half of the witnesses could not be had. Some few witnesses from—shall I be permitted to call it the "Federal" Army, in spite of the Recorder's protest against that word?—were there; but all the Confederate soldiers and generals and other officers were, from the "exigencies of the public service," compelled to be absent, and the court was compelled to get along without them. It does not give a very impressive weight to the judgment of a court that the doors of the court were locked, so that one-half of the witnesses could not get in. That would not pass muster even in a case of "petty larceny," to the like of which the Recorder is sometimes disposed to degrade this examination. I think that any poor wretch who had been convicted and sent to the county jail for thirty days for thieving, would be entitled to a new trial at once if it turned out that one-half his witnesses could not get in, because the doors of the court-room were barred against popular entrance. That is a very important matter indeed in considering the weight to be given to the action of the court.

I observe that my learned friend, the Recorder, has been inclined to draw a line between rebel witnesses and Union witnesses, to the disadvantage of the former. But he cannot raise any such issue with us, nor, as I believe, with this Board. I know nothing in regard to the gentlemen who have been called on our part from the Confederate army, Gen-

1697 erals Longstreet, Wilcox, Early, and Robertson, Colonel Marshall, and many others, except what is known by everybody as historical about them. They were mostly soldiers educated at this institution; and, with rare exceptions, I believe the graduates of West Point are taught, and do learn, so thoroughly that they carry it with them through all their lives, to speak the truth; whatever else they learn or fail to learn, they do learn that. It is a pretty good certificate from this institution that anybody who does not tell the truth is very apt to slip out by the back door of the Military Academy before the day of graduation comes around. Well, I believe they were gentlemen. I believe that they were possessed of just as perfect personal integrity as though they had not been rebels.

They were just as good witnesses as the Federal witnesses and no better, entitled to equal credit, and to be measured by the same standard. Their evidence all around is to be weighed in the balance, and all the witnesses alike are not to be counted, but weighed. If they were to be counted we should have got out of court a good while ago; for after we had closed our case with the examination of forty or fifty witnesses, the Recorder summoned in a hundred. So, pray, don't count the witnesses, but weigh them.

Again, the court-martial was led to believe, and it disposed of the case upon the theory, that there was a retreat by General Porter. On this vital point it has now been demonstrated, to the satisfaction of the most skeptical, as already shown to you by the arguments of my associates, that the whole pretense of any retreat at all was without the least foundation in fact. But once more, to dwell a little longer on the errors of the court-martial, and that on a part of the case which was most essential, namely, the alleged disobedience of the 4.30 p. m. order of August 29th, the whole truth was not before them, and there was what has now been shown to have been the most palpable falsehood before them instead of the truth. I suppose that if there is one fact that now stands clear beyond—I will not say contradiction, because the Recorder can contradict anything—but beyond reasonable contradiction, it is, that that order never reached the hands of General Porter until the sun was setting at about half past six; yet the case was passed upon by the court-martial upon the evidence before them, in the belief that it was received by him at five o'clock or half past five. Now, everything is perverted by false evidence. No court can stand up against perjury—no court can stand up against mistake, or against any manner of false evidence, and if you find that they were misled by false evidence, whether intentionally false or not is wholly immaterial, it lessens the weight to be given to the judgment of the court-martial. This is also, I think, fairly to be said upon the record of the court-martial, that whatever weight was given to facts, the facts were outweighed by the opinions of witnesses—the opinions, I mean, of General Pope, General McDowell, General Roberts, and Colonel Smith. If I undertake anything in this argument, it will be to demonstrate to the satisfaction of this court, and of every thinking mind that looks into the case, that the opinions of these witnesses cannot be treated as fair or impartial opinions; that, whether from bias or from mistake and ignorance of fact, it was utterly impossible for them to express a fair and impartial opinion. But that their opinions did carry that court-martial, there is and can be no doubt. As to both General McDowell and General Pope, with the utmost disposition to do honor to the established authorities, it is our duty in this case to demonstrate to you that if they had stated to the court-martial what they have stated since, and what one of them has stated upon oath before you, Gen-

1698 eral Porter's conviction could not possibly have taken place, and he would have been discharged by that court, not with condemnation, not with rebuke, but with honor.

Now, as to the rules of evidence applied by the court-martial, I think that, if they were overborne by peculiar impulse, if they were men and not gods, if their minds were biased by causes which they could not help or prevent, perhaps you would find some signs of it in their proceedings. And so, and only for that purpose, I ask you to look into the record for the purpose of seeing how they treated certain questions of evidence which are subject to well-established rules. And first, when General Pope was on the stand, at page 20 of the court-martial record, a question was put to him which was certainly very material—in a case tried upon opinions, to the last degree was it material:

Q. If, as you have stated, you were of the opinion that the army under your command had been defeated, and in danger of still greater defeat, and the capital of the country in danger of capture by the enemy, and you thought that these calamities could have been obviated if General Porter had obeyed your orders, why was it that you doubted, on the 2d of September, whether you would or would not take any action against him?

The witness declined to answer the question, as not being relevant to the investigation. The room was cleared for deliberation; and although they allowed the question to be filed, they did not allow it to be answered until the following took place:

The Judge-Advocate said: The witness requests the permission of the court to answer the question referred to in the protest just read. The accused made no objection. The room was thereupon cleared, and the court proceeded to deliberate with closed doors. Some time after the doors were re-opened and the Judge-Advocate announced the decision of the court to be that the witness have permission to answer the question referred to.

Now, is not that a novel method of judicial procedure—to make the admission of a question of evidence depend upon the wish of the witness and not upon the rights of the accused? First, to exclude the evidence as irrelevant, because the witness refused to answer it, and then to admit it as bearing against the defendant, when the witness requested permission to answer it. A whole day for deliberation intervened. It was not admitted the second day because of any mistake in the judgment of the court on the first day, or of any change of opinion as to its relevancy, but because the witness changed his mind and his wish. Well, you cannot sit in review upon that; but, does it or not tend to confirm the suggestion that we make on the part of General Porter, that that court, from the necessities of the situation, could not be judges? I will not state all the numerous instances of this kind, but I will call attention to three or four more.

The same witness, General Pope, was still being examined by the accused. He had given an opinion against General Porter, whose counsel wanted to test that opinion.

Q. Bearing in mind the terms and tenor of the order of 4.30 p. m. of the 29th of August, and its direction to the accused to attack the enemy's flank, and, if possible, his rear, and at the same time to keep up communication with General Reynolds, on the right of the accused, please to inform the court whether, if it could have been foreseen at 4.30 p. m. that at the time when the accused should receive that order he would find himself in front of the enemy in large force, in such a position that he could not outflank the enemy without severing his connection with General Reynolds, on his right, would you, if that state of facts had been foreseen at the date of the reception of the order, have expected or anticipated obedience from the accused to the order according to its terms?

He had already testified against the accused that he would expect obedience to the order as the question had been put. Here was a

1699 question put to him on cross-examination for the purpose of testing the weight of his opinion in every aspect of the facts of the case; it was the clear right of the accused to put the question. The question was objected to, and after a good deal of discussion, and after the clearing of the court and its deliberation—

After some time the court was reopened; whereupon—
The Judge-Advocate announced the decision of the court to be that the witness shall not answer the question propounded by the accused.

Then, when the court-martial had General Roberts (at page 49 of the record) under examination, the same sort of a question, as it appears to me, was decided in a different way. He was now being examined by the Judge-Advocate:

Q. In view of what the army had accomplished during the battle of the day in the absence of General Porter's command, what do you suppose would have been the result upon the fortunes of the battle if General Porter had attacked, as ordered by the order of 4.30 p. m., either on the right flank or the rear of the enemy?
(The accused objected to the question.)
The court was thereupon cleared.
Some time after the court was reopened, and the Judge-Advocate announced that the court determined that the question shall be answered.

What I have to say is, that undue weight was given to the opinions of the generals who testified adversely, and that they were not freely permitted to testify upon one side as upon the other. For, further, it appears that on the cross-examination the accused was not allowed to test his opinion which had been introduced on the direct. On page 51 of the court-martial record, when the same witness was under examination by the counsel for the accused, this occurred:

Q. Did not the joint order specially exclude from the discretion of Generals Porter and McDowell the necessity of their remaining in such position as to enable them to fall back behind Bull Run?
(The question was objected to by a member of the court.)
The court was thereupon cleared. After some time the court was reopened, and the Judge-Advocate announced that the court determined that the question shall not be answered.

Now, whether these and other similar rulings could have been reviewed or not in a court of law is not the question. There are many more of the same sort. They have been carefully digested in a previous paper, which will be placed before this Board.* I only call the attention of the Board to them for the purpose of demonstrating, as it seems to me they demonstrate themselves, that the times were not favorable to the administration of justice by that Board upon the case and the questions that were before them; so I will not trouble the court with any more reference to what may be called internal evidence from the record. I only claim from all these circumstances that I have now brought to the attention of the Board that there is good ground for saying that the judgment of that court-martial, as a judgment, ought not to stand in the way of justice now on any of the questions involved in the record; that it does appear that they were not placed in a position that rendered it likely, or, as we think possible, for them to bring to bear a clear, undisturbed, unbiased, judicial mind upon the questions before them.

So, too, in regard to the opinion of President Lincoln. There is no man in history for whose opinion on a case like this, if he understood it, if the facts were before him, I would claim greater weight than for that of President Lincoln, and I believe that will be the judgment of the country. You will observe, in the first place, that these errors

*The appendix to reply of Hon. Reverdy Johnson to Judge-Advocate Holt.

which were committed by the court were all involved in the re-
1700 cord upon which it was his constitutional province to pass; and if he had examined that record and then approved the sentence, they would have been committed by him also. But we have made it clear that President Lincoln did not examine the record; that he could not have examined the record, and that he made his decision not upon the evidence, not upon any opinion of his on the evidence and the facts in the case, but upon the paper that was of a nature to mislead him, prepared by the Judge-Advocate General under the order requiring a fair and judicial revision to be made of the whole evidence, but which unfortunately sets forth only parts of the evidence, as it appears to us, in a cruel and vindictive spirit, and in a way calculated only to prejudice and poison the mind of the reader against General Porter and against the truth. The great pressure of his overwhelming official duties in that crisis of our country's fate left the President no time to examine the record, and compelled him to rely, as he had a right to rely, upon what he believed to be a fair judicial review of the evidence, but which was, in fact, the one-sided and embittered statement of an advocate determined upon the ruin of the accused. We proved that by Governor Newell, because President Lincoln told him so. When application was being made to President Lincoln for relief on the part of General Porter, he said to the governor, in substance, that he had not been able to read the record. Do not the dates demonstrate with equal clearness that he had not and could not have done so? The judgment and sentence were pronounced on Saturday night, the 10th of January. On Monday morning the order was made by the President—this order requiring the revision for the advice and determination of the mind of the President to be made by Judge-Advocate-General Holt. Yes, on the 12th, one day prior to the proceedings having been forwarded to the Secretary of War for transmission, under the law, to the President. So that the proceedings were not in the President's hands before they went to Judge-Advocate Holt, or before the 19th, when his pretended review bears date; for on the 19th comes that extraordinary paper, which has been sufficiently reviewed and exposed by Mr. Bullitt; a paper calculated not to lead the President to the knowledge of the facts, but to lead him away from the knowledge of the real facts; and on that he based his judgment approving the action of the court-martial.

I have said before that we were much obliged to the Recorder for calling many a witness that we did not know of and could not have obtained. He calls a son of President Lincoln; and if there was any doubt before about how much and what sort of weight ought to be given to the opinion of the President, it is terminated by his evidence, is it not? What does he say? He was then a young man of nineteen or twenty, and his father was in the habit of talking with him confidentially. One day he found his father reading or meditating on the Porter case; and the President produced to him, what? Why, that dispatch of General Porter to Generals King and McDowell in the latter part of the 29th of August, indicating an intention to withdraw to Manassas, in accordance with the injunctions contained in the joint order of General Pope. Where did he find that? Why, it was set forth in full in the opinion, in the paper, prepared by Judge-Advocate General Holt. The whole fact of the retreat was there; and that was all the retreat there was; and we shall find that, instead of being a censurable purpose, it was altogether praiseworthy under the circumstances as now known and the facts out of which it arose. But the President was led to believe, because it is so stated in that paper of

Judge-Advocate-General Holt, that there was no doubt that
1701 General Porter carried out and acted upon the intention declared in that letter and did retreat, believing that the rest of the army was standing its ground against destructive odds. It was in this false belief that the President evidently spoke. Now we know, if we know anything, that the dispatch to Generals McDowell and King meant nothing of the sort, and that there was no retreat. Then what did President Lincoln say? And this shows exactly what I have said before, as to the discrepancy between the guilt imputed, and the punishment awarded. Why, President Lincoln said that if that was true—if all those malignant statements and those perversions of testimony so insidiously set forth, in the papers of Judge Holt were true—that it would not have been too much or too severe a sentence if General Porter had been condemned to be shot. So, when you examine that opinion and find the basis of it, you will see that, as applied to the facts and circumstances now before the court, it is no more pertinent than if it were in reference to the case of some other officer in some other war. But the striking point in Robert Lincoln's testimony as compared with Governor Newell's is this: The two together show how completely the mind of the President in regard to the case had been changed before his death, and how from being satisfied, and more than satisfied, with the condemnation of Porter, he had come, by a knowledge of the actual facts, to the conviction that in justice he was entitled to a new trial.

THE CHARGES AGAINST GENERAL PORTER.

Let me now take up very briefly these several charges. I propose to consider them in their order, because there is some confusion likely to creep into the case if they are considered otherwise, as the learned Recorder has seen fit to treat them. In respect to the transactions of the 29th, he jumbled up the consideration of all the charges, irrespective of the Article of War under which they are drawn. It may be that an officer is guilty of disobedience and yet is not guilty of the heinous crime of misbehavior in the face of the enemy, running away for the purpose of abandoning the capital of his country to a rebel host; and on the other hand, the accused party might be not guilty of disobedience, and get guilty of misbehavior before the enemy. So it seems to me that accuracy of judgment can only be preserved by treating of the distinct charges in the order in which they are arranged.

In respect to the first charge, the alleged disobedience by General Porter, of the order of the 27th. I will first read the charge, and then offer a very few observations about it.

Charge 1st, specification 1st—Disobedience of 6.30 p. m. order.

CHARGE 1ST.—Violation of the 9th Article of War.

Specification 1st.—In this, that the said Major-General Fitz-John Porter, of the volunteers of the United States, having received a lawful order, on or about the 27th August, 1862, while at or near Warrenton Junction, in Virginia, from Major-General John Pope, his superior and commanding officer, in the following figures and letters, to wit:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—6.30 p. m.

GENERAL: The major-general commanding directs that you start at one o'clock to-night, and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from

Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward imme-
1702 diately; also sent word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight.

I send an officer with this dispatch, who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of Major-General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

Major-General F. J. PORTER, *Warrenton Junction.*

P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery, as a guard, till he comes up, with instructions to follow you immediately. If Banks is not at the Junction, instruct Colonel Cleary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

By command of Major-General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

——did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862.

The ground has been very fully gone over on our side, and it would be only imposing upon the good nature of the Board if I should detain it very long. In the first place your attention has been called to the comparatively trifling nature of the charge—I mean as compared with the gross magnitude of those in respect to the 29th. It all depends upon what we believe to be an immaterial variance, utterly immaterial, of two hours in the time of starting on the march on the night of the 27th. Without any regard to discretion, to judgment, to reasons that existed to the contrary, without any regard to the circumstances of the case, the learned Recorder asks in the most defiant manner; "Was he not ordered to march at one o'clock? He was. Did he march until three? He did not. Is he guilty? Guilty." Well, if that is the way to dispose of the charge, there is no use of examining it; there is no use of a trial. He was ordered to start at one; he did not start until three. And the Board will observe that the same case might be made if, instead of being two hours, it was one hour, or half an hour, or quarter of an hour. If a court-martial can convict an officer and dismiss him from the service for a variation of two hours from the time at which he was ordered to march without the least regard to the circumstances, they can just as well do so, by the same summary method, for a delay of fifteen minutes.

The learned Recorder made one suggestion in this connection that rather galled me. Even on the court-martial there was a decent regard paid to the feelings of the accused. The forms of courtesy at least were adhered to. But the learned Recorder in his opening argument has suggested that this change of two hours on the night of the 27th was made by General Porter in the hope that those two hours would bring a change of commanders, from Pope to McClellan. I do not think such a suggestion as that is worthy of this Board or of a component member of it. Now that I am upon that subject, let me say also this: that the observations that he made this morning imputing a lack of personal integrity to General Porter are as gratuitous as they are offensive. I do not think he would have made that after deliberation. Nobody ever made any such suggestion before as that General Porter willfully stated falsehoods in his dispatches—a charge distinctly made by the Recorder this morning. That was not the charge on which he was being tried by

the court-martial or retried here. I shall not make any more observations about these insinuations in the further progress of the discussion, except to repeat once for all that they were very uncalled for and very painful to the feelings of the petitioner and his counsel.

1703 As to this order of the 27th. I say, although the complaint was a trivial one, although nothing came of it, and there was no delay resulting, although, as I suppose, it was merely thrown in as a make-weight on the subsequent and greater charges, still General Porter is bound to explain it and justify it. We ask nothing that shall loosen the bands of discipline or impair the cardinal rules of the military service as to implicit obedience to orders. We claim implicit obedience, and we claim intelligent obedience; we claim actual and not fictitious and pretended obedience; we claim that a corps commander should act, and that General Porter did act, not like a machine set in motion by an order which he was not to read or interpret, but that he was an intelligent instrument of the dignity of a corps commander, invested with the functions which the military law imputes to that high grade of service. Now, what is the nature of the question? It is not, as it seems to me, whether he was ordered to start at one and did not start until three. I cannot think that that is the question. If it is, all the labor, talk, and study that has been devoted to it has been thrown away.

The question, it seems to me, is one of intent. Was his failure to march until three, an act of intended disobedience and disregard of the order, or was it a decision justifiably arrived at by him in good faith, in the exercise of his duties and his responsibilities as a corps commander, ten miles from his chief who gave it, and receiving it under circumstances which could not be known to General Pope, who gave it? If you establish the affirmative of the latter question, we claim that General Porter is completely exonerated from this charge. The Recorder has said that General Porter has no right to set up his will against that of the commanding general. Well, so we say. We say he did not set up his will; that he did not assume or pretend to set up his will. His will, his impulse, was to obey the order strictly and to the minute; but his judgment, which he was at liberty to exercise, which he was bound to exercise, required him not to move until the near approach of day. In the first place, in regard to this order, I make one observation, and that is, that whatever may be the duties of corps commanders in the interpretation and execution of orders, they have a right to expect that all orders that are sent to them by their chiefs at a distance shall be both intelligible and possible of execution—I mean possible within the view of the sender. Now, was this such an order? Although the Board are perfectly familiar with the order and the objects expressed upon its face, I will read it once more.

I want to ask whether you think that General Pope thought it was possible of exact execution when he gave the order. Because, if he did not, the rule of discretion conceded by the Judge-Advocate and conceded by the learned Recorder comes in. Applying the test of the Napoleonic rule in respect to obedience and discretion, as to orders given by a commander at a distance, it is contended by both of those learned legal authorities that there is no discretion as to the end, although there may be a discretion as to the means. The rule is as follows:

> A military order exacts passive obedience *only when it is given by a superior who is present on the spot at the moment when he gives it.* Having, then, knowledge of the state of things, he can listen to the objections and give the necessary explanations to him who should execute the order.

The prosecution in that view says that this order was to get to Bris-

toe by daylight, and if he could get to Bristoe by daylight by starting at some other hour than one o'clock, all right, no offense given or taken in changing the hour of starting; but there is no discretion as to the end. Well, suppose you have a written order of which the
1704 sender does not believe the end was possible; suppose General Pope orders General Porter to march from Warrenton Junction at one o'clock, so as to get there at daylight, when he knows it is not possible for him to get there at daylight, or when he has fair reason to believe that it is not possible for him to get there at daylight, and that General Porter on receiving it knows that; how does that affect the application of the rule as to discretion, if there is such a rule? It removes the end altogether, does it not? If the commanding general orders a corps commander to march at one to reach a certain place by daylight, knowing that he cannot do it, even by starting at one, what is the next conclusion? How is it to be construed? Why, it is to get there with all practicable speed, is it not?

Now, I want to ask the Board whether they believe that General Pope, when he said start at one a. m., and get to Bristoe at daylight, thought Porter could do so? That is an important question. If General Pope had honored us with his presence, we could have found out from the best authority. But when he stood at his post in Kansas and said he would not come upon a request, but would come upon a subpœna, and then when he was subpœnaed said he would not come at all, and defied the summons of this Board, we have a right still to explore the case for his motives and his knowledge. And, fortunately, we are not without the means of ascertaining them. It so happens that General Pope had gone over this very road from Warrenton Junction to Bristoe that afternoon, starting in the latter part of the afternoon and getting there early in the evening, and he knew something about the condition of the road. He did not know how it was after the wagon trains had closed up behind him, but he knew something about the distance and the condition of the road as it was when he went over it. He was accompanied by two very intelligent and distinguished officers. He went alone with those few personal attendants on horseback, and it took them a good while to go; I do not know how long, but more hours than he allowed to this army corps to go in the middle of the darkest night and get there at daylight. Having got there, he sends an order for this army corps to start at one, saying that it was necessary for them to be there at daylight. Now, what I say is, in the voluntary absence of General Pope, if you have the judgment of two equally competent persons who were with him when this order was issued, and who accompanied him on that journey, you have, I think, a pretty fair means of testing whether General Pope thought it was a practicable or possible order. I refer to the evidence of General Ruggles and General McKeever, to both of which I shall ask permission to call the attention of the court.

I will read McKeever's testimony first, at page 147:

Q. I will ask you whether, in your judgment and experience, a military commander who had himself accompanied an army corps over that road in daylight that day from Warrenton Junction to Bristoe, would have deemed it advisable for another army corps of 9,000 men, with artillery, to leave Warrenton Junction at one o'clock in the morning to reach Bristoe Station by daylight or near that hour?

From the answer it is evident that the word "advisable" is a misprint for "practicable."

Daylight, I believe, for the purpose of this discussion, is generally admitted on all sides as about four o'clock.

A. That is a difficult question to answer. It did not seem to me at the time to be practicable.

There is a clear and emphatic opinion by one officer entitled to great weight, as it seems to me.

1705 On page 279 General Ruggles, General Pope's chief of staff, says:

Q. Have you heard the proof here, or do you know what has been proved of the obstruction of that road by 2,000 or 3,000 army wagons?

A. I know there were a large number of wagons and that the road was blocked; I heard that after General Porter had come up. I knew that the road was reported to have been heavily blocked with wagons.

Q. Do you know anything of the darkness of that night?

A. I know it was very dark—so dark that I lost my way going a few hundred feet from the bivouac.

Q. How do you recollect that?

A. I recollect that from the reason that I had nothing to eat since morning. Our mess-wagon came up; our cook had been captured, and we could not find any servants, and I had to stumble round in the dark myself. I think we shouted and hallooed to people, and finally we got to the wagon; then I got in and looked around, but could find nothing more than a ham bone, the same as Colonel Johnson; the ham bone had been pretty well picked.

Q. Does your experience enable you to form a judgment as to the practicability of an army corps on such a night, with a road obstructed as you understand this to have been, starting from Warrenton Junction at 1 o'clock a. m. to reach Bristoe Station by daylight?

A. I don't think it could have been done. I recollect that road as I came through.

And he came through side by side with General Pope.

It ran part of the way through groves or woods; and I recollect that there were stumps of trees and of saplings in the road; that the road was filled with these little stumps; that the road itself was tortuous. I think the men would have been impeded in the road by the trains, by these stumps, and by the crookedness of the road. According to my recollection, there were several runs that crossed the railway between those two points, and over these runs were open bridges. I think the men could not have marched upon the railway, because in the darkness they would have fallen through these open bridges.

Now, does not that satisfactorily establish that General Pope, when he gave that order, could not himself have deemed that it was practicable to obey it? If so, what becomes of this rule, urged by the Judge-Advocate and by the recorder, that the corps commander, in such a case, has no discretion as to the end? There is no end if the end is impossible, except the end indicated by the order as the object of calling the army corps over the road. As it has been pressed against General Porter, we have considered whether it was possible. But, further, was it quite fair and honest? It was pressed upon the attention of the President, you will recollect—and the court seems to have been imposed upon to believe—that the immediate occasion of giving this order was, because, after the fight with Ewell in the afternoon, it was found that Hooker had got out of ammunition; and Porter having ammunition, that was the reason for sending for his corps to come up; and, also, because of an anticipated attack in the morning by the returning enemy. Both those considerations were urged upon the President, in the review by the Judge-Advocate, and he was led to believe, as I understand, that that being the purpose for which the order was sent, was the reason for its urgency, as made known to the court-martial. Well, now, if those were the purposes, would not it have been fair to put them in the order? If General Porter was afterwards to be tried and convicted for not obeying an order, the urgency of which was that they were out of ammunition and expected an immediate attack, would it not have been fair to put one or both of those reasons in the order?

PRETENDED REASONS FOR THE ORDER.

Let us see now how this matter about the ammunition and the anticipated attack stands. General Pope made a report of September 3, which has been put in evidence, but not yet called to the attention of
1706 the court, and it is to be found in this Board Record, on page 1115. In that was the first suggestion that this order was sent on one of those accounts. There it is stated in this way, on page 1116:

The unfortunate oversight of not bringing more than forty rounds of ammunition, became at once alarming. At nightfall Hooker had but about five rounds to the man left. As soon as I learned this I sent back orders to Fitz-John Porter to march with his corps at one o'clock that night, so as to be with Hooker at daylight in the morning.

He does not say anything about any anticipated attack in the morning. But he afterwards, January 27, 1863, made what is called his official report; and there both these circumstances for the first time appear. There, at page 18, he puts it in this way:

Thinking it altogether likely that Jackson would mass his whole force and attempt to turn our right at Bristoe Station, and knowing that Hooker, for want of ammunition, was in little condition to make long resistance, I sent back orders to General Porter, about dark of the 27th, to move forward at one o'clock in the night, and report to me at Bristoe by daylight in the morning.

You will observe that the order says nothing about either of these matters. The order describes a very different state of things, and of purposes. After giving directions to come, and referring to the fight that Hooker has had, the order says:

The enemy has been driven back, and is retiring along the railroad; we must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is.

And these are the only purposes expressed in the order. Nothing about ammunition, nothing about an anticipated attack; and for two reasons: First, he did not know when he sent the order that they were out of ammunition; and, second, he had no reason for anticipating an attack, because he thought the rebels were retreating, and wanted Porter there to pursue them. Now, the Recorder says that General Pope and General Heintzelman, and all the witnesses, prove that Pope knew, when he gave the order, that Hooker was short of ammunition. I take direct issue with that statement, and say that they do not; that they prove just the contrary; that they prove that General Pope did not know of the ammunition being short, and did not know of the anticipated attack when he wrote this order. The order is dated 6.30 p. m., which is sunset; an hour after that it is dark. General Ruggles, in his testimony before this Board, says he wrote the order and dispatched it before reaching Bristoe, where Pope arrived at dark; and then, and not till then, could he have received any report of lack of ammunition on the part of Hooker. General Pope, on page 12 of the court-martial record, says "just at dark." Very precise. This is his sworn statement:

Just at dark Hooker sent me word, and General Heintzelman also reported to me that he, Hooker, was almost entirely out of ammunition, having but five rounds to a man left.

General Heintzelman, at page 80 of the same record, says this:

Q. What information have you in regard to the condition of General Hooker's supply of ammunition after the battle of Kettle Run, on the 27th of August?

A. A portion of his division was nearly out of ammunition.

Q. Was or was not that fact made known to Major-General Pope in the afternoon of the 27th of August?

A. Late in the afternoon it was.

Well, this says late in the afternoon. But that precise point of time is fixed by General Pope, for he says it came to him just at dark; and he ought to know. Then the witness Dwight does not help the
1707 Recorder at all on that matter. His evidence appears at pages 722 and 724 of the Board record. He says, after the fight:

We were short of ammunition. I was sent by Colonel Taylor to General Hooker to ascertain what we should do in case we were attacked during the night, as there seemed to be some doubt as to whether it was a rear-guard or whether there would be an attack made. General Hooker replied to me, nearly as I can recollect: "Tell Colonel Taylor that we have no ammunition, but that there has been communication had with General Pope, and General Pope has communicated to General Porter, and General Porter should be here now. He will be here in the morning certainly."

And on page 724:

Q. What time did you go into camp?—A. Some time in the afternoon. When we communicated with General Hooker it was towards dark, if I recollect.

Q. How near dark?—A. It was dusk; I could not say the hour; late in the afternoon.

Q. May it not have been before dark?—A. No, sir; it was quite dark.

Thus you have all the facts and circumstances; and you have the time when Hooker communicated to Pope, and it was just at dark. There is not a particle of evidence in the case varying it from that. Writing his order to General Porter at 6.30, he does not say a word about ammunition, because he knew nothing about it; and yet, in his report, and on the trial, and before the President, it was imputed to General Porter that this order was based upon the urgency of a want of ammunition known to General Pope at the time he sent it.

PORTER'S INTERPRETATION OF THE ORDER AND ACTION UNDER IT.

The first thing, in considering the action of General Porter under this order, as it seems to me, is to inquire how it must have been considered by him when he received it. It was brought by Capt. Drake DeKay, whose evidence was taken on the court-martial. Now, what is the fact about Drake DeKay's arrival with the order, and how did he come? He came alone; he came on horseback with this order, which is regarded all around as one of great urgency, and he came as fast as he could, did he not? I suppose so. He claims so. Now, what time did he get there? The learned Recorder thinks he got there about 9 o'clock. But General Pope, in his report of the 3d September, states the exact hour. He says:

The distance was only nine miles, and he (Porter) received the dispatch at 9.50 o'clock.

It is said that General Porter did not know very much about the road. Didn't he? He knew that there was an aide, bound to make all possible speed, coming alone on horseback over the road, starting at 6.30—that is, with the advantage of the last hour of daylight—and it took him three hours and twenty minutes, which was twenty minutes more than General Pope proposed by the order to allow an army corps to go the same distance over the same road, in the darkness of midnight, afoot. Did not General Porter know anything about the condition of the road? Was not the first thing that necessarily came to his mind the impracticability of exactly executing the order? It seems to me that is beyond all question. What else came with it? Why, DeKay complained that the road was obstructed, and of the great difficulty he had had in getting through. Now, if he had had great difficulty in getting through alone on horseback, because of the obstructions of the road, General

Porter at once saw that to an army corps, going without any light
1708 whatever, on foot, and with their artillery, as they were required, it was an impossible order. What was his first impulse? There is a great deal of talk about *animus* in this case. The first words that an officer utters when he receives an order have a very strong bearing upon the question of *animus*. He says, this order must be obeyed; General Pope, who gives it, knows what he wants. Let us start at once! To whom does he says that? To his division commanders; all men of character and unquestioned loyalty and integrity—Morell, Butterfield, and Sykes. Some criticism is made as to the manner of the petitioner, whether he read the order aloud, or whether he handed it to each one of them, or whether they knew its entire contents. But General Butterfield says he handed it to Sykes or Morell; and I think General Warren says the same thing. And Mr. DeKay says that they discussed the subject-matter; he told them what had happened, and that he was sent to guide them back.

Now comes the question of discretion. These division commanders, all three of them, instantly united in a common protest against starting at one o'clock. And on what ground? Because of the jaded condition of their troops, taken in connection with the impenetrable darkness of the night, for it was impenetrable at that time, and the blocked condition of the road, it being absolutely blocked up with wagons. Wagons had been rolling through there all day on the retreat to Alexandria, as specified in the orders of General Pope, which I will presently read to you. Now, it seems to me that the question which is presented in a military sense (and on that I speak with infinite distrust) is this: When the division commanders, who are charged with the responsibility for the welfare and condition of the troops and the performance of a march, unite in such a protest on such a ground, ought their protest to be taken into consideration? There is the test of the guilt or innocence—of the alleged disobedience. Ought such a protest to be taken into consideration? Well, General Porter thought it ought. And if it ought, who is to consider it? Who is to say whether, in view of the jaded condition of the troops, or some of them, and of the infinite darkness of the night, and of the absolute blockade of the road—who is to pass upon that question, or is it not to be passed upon at all? Is it to be considered, and if it is to be considered, who is to consider it? General Pope, who gave the order, cannot consider it; he is ten miles away, and does not know these circumstances. If you answer the question, yes, that it is to be considered, the whole question of disobedience passes away, for General Porter is the only man left to consider it; the rules of war place him there as the substitute of General Pope. That is the way it appears to me. You will observe that while it is an absolute and peremptory order, if you please, to start at one and get there by daylight, yet it gave the reasons why his presence with his corps was wanted. On this question of whether he ought to consider the protest of his division commanders in view of the terms of the order, what the order says as to what he was wanted for, as it seems to me, comes in:

> The enemy has been driven back; but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is.

He was wanted, then, to be there, not at daylight—not at all; General Pope, as we have seen, never could have suspected it possible for him to be there at daylight; he was wanted as early as he could get there in the morning to pursue the retreating rebels, and sweep the country between Manassas and Gainesville.

Now, was it the thing, in a military point of view, for a corps commander so situated, receiving such a protest on such a ground
1709 from his division commanders—was it right for him to take the protest and the circumstances into consideration, in view of what he was wanted at Bristoe for? Well, we submit that it was. We submit that just that protest, on just those grounds, raised the question, whether he could be there so as to fulfill the purposes for which the order said he was wanted—not his own ideas, not his own purposes—but General Pope's statement of what he was wanted for. If you find, first, that it was right for him to exercise that judgment; second, that he exercised it in good faith; and, third, that he exercised it on fair and reasonable grounds and knowledge, he must stand acquitted. It does not seem to me that there can be the least doubt, regarding it as a question of law, or military science, or common sense. I suppose that in your profession, as in ours, great questions of law, and great questions of military duty, alike depend upon the dictates of common sense, and are governed by them.

Now look at the ground of protest as bearing upon the objects of the order, as stated in the order. What kind of obedience did it call for? Did it call for General Porter to plunge his corps into the absolute darkness of midnight, at one o'clock, and throw them into inextricable confusion, and set them floundering about in camp, or at the first run, so that they could not be extricated until after daylight, and so that they could not start on the road until long after they had broken camp? I suppose that it called for an effectual, serviceable obedience. That is what common sense dictates. That is what we suppose military laws and regulations require. General Porter heard the protest. What did he know that General Pope did not know? Well, he knew the condition of the road as Drake DeKay, the messenger, found it. He knew the condition of the road, as his officers knew it; as his aides-de-camp, Captains Monteith and McQuade, who had been sent out for the purpose, had reported to him. And then, as to the condition of the troops, General Pope had not made any inquiries about that; there is not the least scintilla of evidence in the case that he had any knowledge whatever about it. Well, these troops that had been making day and night marches all the way from Aquia Creek—their condition is not to be tested by a question of how many hours and minutes they had been in camp that day, or that night, but upon the knowledge and honest judgment of their direct and immediate commanders, exercised in good faith, as to their condition. The Recorder says that the direction of the order was, that Sykes should come alone. That was not so. Sykes was not to come alone. Nobody was to come alone; if Morell was not there, Sykes was to come alone; but if Morell and Sykes were together there, as the proofs show that they were, then the order is imperative.

The major-general commanding directs that you start at one o'clock to-night, and come forward with *your whole corps*.

THE CONDITION OF THE ROAD.

Briefly, as to the condition of the road. The evidence on this subject is very full. So fully has it been developed that I will not refer to it. I understand the substance of the evidence to be that there were between 2,000 and 3,000 army wagons upon the ten miles of road. In one respect it will be seen that this case differs from its attitude before the former court upon this question; the government has abandoned the pretense that he could have gone along the railroad, because, I suppose

under the evidence of McKeever and Ruggles, the Recorder thought it was idle to make any such claim as was claimed before. Well, then, it was a common dirt road, and not a turnpike; running partly
1710 through the woods, and blocked up with 2,000 or 3,000 army wagons, which, if stretched out one by one, would occupy 24 miles in length; and if they were doubled up it is very difficult to say how even a horseman could get through without the greatest difficulty, as Drake De Kay found when he undertook to come alone.

DARKNESS OF THE NIGHT.

The character of the night also has been pretty amply developed. If ever there was a dark night, it appears to me, from the evidence, that this of the 27th of August, 1862, was it. They say that there were other marches that night. Yes; there were. There was the march of King's division. I should think a dozen privates had been brought here from Gibbon's brigade, King's division, to say how they marched that night. Do you recollect the evidence of General Patrick and General Gibbon about it? They were terminating a march that night, floundering and straggling along, going into bivouac at ten or eleven o'clock. The evidence of General Patrick is that he had to stretch a line of men across the road, in order that the troops might be stopped as they came along and turned aside, for it was not possible for them otherwise to see that those in advance had stopped. Then it is said that Lieutenant Brooke made a ride from Pope's headquarters to Greenwich, with a troop of sixteen men, to carry an order to General Kearney and an other to Reno. Yes; he did. How did he do it? Riding on an unobstructed road it took him three hours and ten minutes to go four and a half miles. There is also another very significant piece of evidence in the case, because it is the testimony of one of the main witnesses for the government; Lieut. Col. T. C. H. Smith went out on a scout, as he calls it, and he made five miles between one o'clock and six o'clock. He says he was scouting for rebels, but I don't think he was. I think he was scouting for General Porter; for he says that he came around soon after daylight or about six o'clock, at a distance of two or three miles from Bristoe, whence he had started, and then and there saw the head of the column come up, with General Porter at the head. Colonel Smith was, as you know, one of the most malignant of witnesses against General Porter. But he confessed that there was that night, beginning at nine o'clock or thereabouts and extending until eleven or twelve o'clock, a storm of darkness that exceeded anything he had ever witnessed; the darkness was absolute; he could not see his hands before his eyes; what eyes he has the Board know, because it was those marvelous optics that saw treason lurking in the eye of General Porter on the next day, the 28th of August. The darkness, according to him, was total. He says it is true, that at one o'clock, when he started out, it was not so dark; that he could see the forms of the houses and fences in Bristoe; but he forgot to add what we called out from him on further examination, that the light of the fire at Manassas, that was made by Jackson burning our ham and bacon and flour in such immense quantities, was still perceptible, but even that light was extinguished by the Cimmerian darkness of the storm between nine and twelve o'clock. Now, there is something singular about this. When General Porter was called upon to act upon this order, it was right in the middle of the Egyptian darkness of that night, as depicted by Lieut. Col. T. C. H. Smith. I do not think the Recorder had ever considered that when he pretended there

was not any new evidence in the case on the subject of the darkness of the night.

Another suggestion was made by the learned Recorder. I must admit that it would be unfair to ask any lawyer or military man to
1711 charge his mind with all the proof in this case. It is not possible. No man's skull is large enough to carry it all, and therefore I do not blame the Recorder for forgetting it. But he would not have asked the question that he did ask if he had remembered the evidence. He asks, why did not General Porter send back word to General Pope that he was not going to start until daylight, and his reasons for not starting? Well, the answer is, he did. After a lapse of sixteen years, when we have such an infinite variety of facts brought out with such perfect clearness, it is one of our grievances that we still lack four things, four links in the perfect chain of proof. I refer to the failure of General Pope to produce the three dispatches which he received on the 29th from General Porter, and the dispatch that he received on this night of the 27th, when General Porter, at the close of the deliberations of his council of war, sent a written message by special messenger to General Pope, declaring that he could not start, and why he could not start, at one o'clock, the hour mentioned in the order, and when he was going to start. That is so important that I want to call the attention of the Board to the evidence on the subject. General Pope, at page 13 of the court-martial record, testified as follows:

Q. Did he at that time, or at any time before his arrival, explain to you the reason why he did not obey the order?—A. He wrote me a note, which I received, I think, in the morning of the 28th, *very early in the morning, perhaps a little before daylight.* I am not quite sure about the time. The note I have mislaid. I can give the substance of it. I remember the reasons given by General Porter. If it is necessary to state them I can do so.

And on page 27:

On the contrary, from a note that I had received from him, *I did not understand tha he would march until daylight in the morning.*

Q. Have you, sir, in your possession, or can you readily find in this city that note?—A. I cannot, as I stated in my evidence yesterday. As the same statements contained in the note were made to my aid-de-camp, if other testimony on the subject is necessary it can be got from him.

Q. When you received the note which, according to your recollection, stated that he would be unable to march, or would not march until daylight, will you state at what hour you received it?—A. I think that, in my testimony, I stated that it was quite late in the night. I do not remember exactly the hour; I think towards morning—towards daylight; perhaps a little before that.

Q. Did you take any steps, by message or order, in another form, to the accused to expedite his march?—A. I sent back several officers to try and see General Porter and request him to hurry up.

Now, he sent back several officers, because of the answer he received from General Porter. He also says that this note expressed the reasons of the change in the execution of the order. We do not accept General Pope's statement that he mislaid this order. He had no right to mislay it. If he mislaid it he should have found it. It is not for the general commanding an army to come into court and say that he has mislaid or destroyed his dispatches when he is seeking the condemnation of an officer in respect to matters which would be explained if those dispatches were produced. General Ruggles has testified that when he ceased to be chief of staff of General Pope, on leaving Washington at the end of that campaign, General Pope required him to hand over all his dispatches, which he did; and he says all were preserved. General Smith, who was aide-de-camp to General Pope, in the same capacity, testified as positively that he handed over to General Pope all the dispatches that he

had had. The learned Recorder has quoted a good deal of Latin. I will give him a sentence: "*Omnia presumuntur contra spoliatorem.*" 1712 A favorite maxim of law, that all things are to be presumed against the destroyer of evidence. There never was a more outrageous pretense or claim made than this, to condemn General Porter for disobedience of an order, and for not explaining the nature of his reasons for that disobedience, when the commander has destroyed or mislaid the note which he received, stating why the order could not be obeyed.

I say there was no delay, no time lost. But suppose that instead of this intelligent obedience and this rational exercise of the functions of a corps commander, having in view the carrying out the expressed purposes of the order in the best way in which they could be accomplished, he had floundered out at one o'clock, as the order required, knowing that he could not, by so doing, get there at daylight in this darkness, as described by Colonel Smith, that they had been involved in the inextricable confusion incident to such starting, and, instead of getting to Broad Run with the head of the column at eight o'clock, as did happen, the corps had been delayed so that the head of the column did not get there until ten or eleven o'clock; he would have appeared to obey the order and he would not have obeyed it. Would not he have been culpable? I am not competent to answer the question. I put it to you as military men; would not he be blamable for making a pretended obedience to the order, and not a real and intelligent obedience, if it had resulted in a delay that had thwarted the objects of the order as indicated on its face?

The Recorder has referred to certain worthless evidence on this subject, of one Buchanan. Buchanan says that he was in front of Porter's headquarters at 3 o'clock and there were no signs of life till after break of day, and that he waited there and saw nothing of Porter till after sunrise; but it turns out from the evidence of Locke and Monteith, who were in personal contact with Porter, that General Porter was already out upon the road endeavoring to clear it to expedite that march in the dark. Then Solomon Thomas, Corporal Thomas, who is always brought in when the Recorder don't know whom else to appeal to—he is brought in to say that they did not start as soon as they should; but it turns out, on his cross-examination, that he says they did start at one o'clock a. m., and did not get to Bristoe until two o'clock the next afternoon.

I call the attention of the Board to another matter, which seems to me to be worthy of consideration.

Several very eminent legal gentlemen have expressed to General Porter their views upon this case; and, if the Board will permit me, I would like to read a short extract from the opinion of Charles O'Conor, which seemed to me exceedingly sensible and entitled to the greatest consideration, and we will treat it as an offset to the opinion of the Recorder:

> After making all proper inquiries and consulting with his chief subordinates, the accused, in conformity with their judgment, deferred the time of starting on the directed march for two hours. This was regarded by the court-martial as an unauthorized deviation from the chief's instructions. For the defense it was asserted that, owing to the darkness of the night, the condition of the road and the obstructions upon it, nothing could have been lost by the change, either in celerity of movement or in the time of arrival, and that the exhaustion of General Porter's troops from their previous service was such that their arrival at daybreak, if practicable by means of a start at the hour indicated, would have been unavailing for the purpose in view. On some of these points the evidence was slightly conflicting, but that in the affirmative preponderated. In my judgment no examination of it was or is necessary. The finding manifestly went upon the ground that in respect to the hour of starting the order was positive in its terms, and that implicit obedience, if physically possible, was there-

fore an imperative duty. I think this view was not sustained by the law or the fact. A careful inspection of the order should convince any one that the writer did not intend to fix positively the time of starting or that of completing the march; taking its whole contents into view, it imported nothing of the kind The prosecutor
1713 was conscious of this, for, upon the trial, he sought by means of the oral extrinsic evidence hereafter stated to import into the document a meaning quite contrary to its purpose and to anything which General Pope intended to convey, or which General Porter could have supposed or even imagined at the time he received it. It advised him (§ 2) that a severe action had taken place (at Bristoe), in which the enemy had been effectually and decisively defeated and driven back, so that he was retreating. It also stated distinctly (§ 3) that the step then in view and determined upon was, "to *drive* him from Manassas and *clear* the country between that place and Gainesville." This cannot be regarded as idle gossip; the facts must have been communicated with a purpose, and that purpose could not have been anything else than to give the subordinate full knowledge of the object and intent of the directed march. The words of the direction itself (§ 1) were indeed peremptory; but this was merely the writer's fashion of speaking. If they were intended to exact the same blind obedience that, standing alone, they might seem to enjoin, adding a statement of the cause or motive was superfluous. Nay, more; it was extremely objectionable for it implied that the subordinate was not expected to act blindly, but to exercise his judgment. Looking to this announcement (§§ 2 and 3), we perceived that it conveyed to General Porter, in the plainest and most intelligible form, information that his troops were not needed either to make an assault at daybreak or to aid in repelling one that was apprehended at that time. And, on the contrary, it showed explicitly that they were to be employed in a service essentially different. Their presence was sought as auxiliaries in the pursuit of a defeated and retiring enemy.

On behalf of the prosecution it was testified at the trial that General Pope's reason for directing this night march was an apprehension that the enemy, though defeated and driven back, might learn that his victorious opponent, General Hooker, was short of ammunition, and, inasmuch as he had not been actually routed, he might, by that intelligence, have been encouraged to contemplate an attack on Hooker in the morning. The date and tenor of the order, in connection with this very testimony (Rec., p. 12), show that the latter was in all respects a mistake. General Pope says it was "just at dark" that he learned the want of ammunition. The order was written, dated, and dispatched at sundown, an hour before dark. It contained no reference to the want of ammunition. Instead of advising General Porter that, as this testimony suggests, the enemy "still confronted Hooker's division at Bristoe Station," it stated the very reverse, *i. e.*, that the enemy had been driven back; and most emphatically, in the words of the present tense, it announced that he was *then*, *i. e.*, at the date of the order, "*retiring* along the railroad." And this, too, was made the basis of a superadded exultant resolve to follow him into the territory to which he had retreated, and thus clear the country of him. It *could* not be supposed that General Pope had in his mind when he dictated this order the want of ammunition or an apprehended assault at daybreak.

The evidence of his somewhat communicative messenger, and the whole frame of the order, preclude such a view of the case. These facts must have come to General Pope's knowledge subsequently to the transmission of the order. Peremptorily enough, to be sure, in § 1 he directed the start at one o'clock; but, conscious that in §§ 2 and 3 he had shown the absence of any necessity for a night march, he returned to the subject at § 5 and, in what must be deemed an advisory or persuasive shape, expressed the desire for an arrival at daybreak. Preliminarily to the expression of this desire he evidently attempted to state some more forcible reason for it. But the attempt was ineffectual; for, in fact, none existed except that already indicated, *i. e.*, the project of an early start from Bristoe in the intended pursuit. The phrase "on all accounts" defined no ground of urgency; and the word "necessary" was evidently employed as synonymous with expedient. (Rec., pp. 19, 20.) Inexact writers, and even those who are generally accurate, often use the word in that sense. I have said that this attempt to engraft upon the written order, by means of oral extrinsic evidence, a supplement or postscript quite inconsistent with its actual terms, must have been founded in mistake. Using the expression in no inculpatory sense, I must say it appears to be a mere afterthought; not, indeed, an afterthought conceived in subtlety, but arising from an involuntary misconception. Whether such a mistake existed or not is, however, quite immaterial, as there was no charge except for disobedience of the written order.

Besides, General Porter could not have divined that in giving the order General Pope was influenced by an object the very opposite of that which was clearly stated and expressed. If the oral testimony was correct, the dispatch was most unwisely framed. It was actually misleading in its character and tendency. So great is the conflict between the written and oral evidence of General Pope's intent and object, that, if the dispatch had been lost or suppressed, there might have appeared to be some color for this charge. With that writing before the court, there being no pretense

that the messenger communicated anything about the want of ammunition or the anticipation of an attack in the morning, the conclusion of the court seems unaccountable.

General Pope was ten miles off; the condition of Porter's corps as to marching capacity was quite unknown to him, and the order affirmatively indicated that nothing was designed but a general movement in the direction of Bristoe Station for the purpose of pursuing an enemy *then* on a retreat. Under these circumstances it seems quite clear that General Porter acted judiciously in avoiding the exhaustion of his already fatigued corps by a night march. This, it could be perceived, would enable him to bring them to the point indicated without undue loss of time, refreshed by needful repose and in fit condition to march on still further, if required, in pursuit of the flying foe. His action was more conformable to the spirit, intent, and actual import of the whole order than if he had started at one o'clock, in literal compliance with its first sentence. According to very ample testimony, from sources entitled to the utmost confidence, he judiciously exercised, in conducting the required march, a discretion vested in him by military law; and on this charge he was manifestly entitled to an acquittal

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The Board then, at 6 o'clock, adjourned until to-morrow morning at 10 o'clock.

FORTY-FOURTH DAY.

WEST POINT, *January* 11, 1879—10 a. m.

The Board met pursuant to the foregoing order and adjournment.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Recorder; also, Fitz-John Porter, the petitioner, and the several gentlemen of counsel.

The reading of the minutes of the previous session was omitted, with the consent of the petitioner.

Mr. Choate resumed his argument on behalf of the petitioner, as follows:

Mr. Choate said: In reference to the subject of the state of public feeling at the time the prosecution of General Porter was initiated, and to the distress and excitement, especially of the authorities at Washington, where the public feeling culminated, I omitted to read a passage or two from the report of General Pope to the Committee on the Conduct of the War. I wish to read this morning from page 166 of that report, where he describes the origin of the complaints—I will not say the beginning of them, but where they take shape in official form, presented by the commanding general of the Army of Virginia to the authorities at Washington. It is in a dispatch written by him on the 1st of September, at Centreville, and addressed to Major-General Halleck, General-in-Chief. He says:

I think it my duty to call your attention to the unsoldierly and dangerous conduct of many brigade and some division commanders of the forces sent here from the peninsula. Every word and act and intention is discouraging, and calculated to break down the spirits of the men and produce disaster. One commander of a corps, who was ordered to march from Manassas Junction to join me near Groveton, although he was only five miles distant, failed to get up at all—worse still, fell back to Manassas without a fight, and in plain hearing, at less than three miles distance, of a furious battle which raged all day. It was only in consequence of peremptory orders that he joined me next day; one of his brigades, the brigadier-general of which professed to be looking for his division, absolutely remained all day at Centreville, in plain view of the battle, and made no attempt to join. What renders the whole matter worse, these are both officers of the Regular Army, who do not hold back from ignorance or fear. Their constant talk, indulged in publicly and in promiscuous company, is that the Army of the Potomac will not fight; that they are demoralized by withdrawal from the peninsula, &c. When such example is set by officers of high rank, the influence is very bad among those in subordinate stations. You have hardly an idea of the demoralization among officers of high rank in the Potomac army, arising

in all instances from personal feeling in relation to changes of commander-in-chief and others. These men are mere tools or parasites, but their example is producing and must necessarily produce very disastrous results. You should know these things, as you alone can stop it. Its source is beyond my reach, though its effects
1715 are very perceptible and very dangerous. I am endeavoring to do all I can, and will most assuredly put them where they shall fight or run away.

Now, to see what effect these words had (and by and by we shall be able to judge what measure of truth there was in them), the effect appears in the same report at page 189:

I made my personal camp at Ball's Cross-Roads, and on the morning of the 3d of September repaired to Washington, with a few officers of my staff, and reported in person to the General-in-Chief, the Secretary of War, and the President. Each one of these high functionaries received me with great cordiality, and expressed in the most decided manner his appreciation of my services, and of the conduct of my military operations throughout.

Great indignation was expressed at the treacherous and unfaithful conduct of officers of high rank who were directly or indirectly connected with these operations, and so decided was this feeling, and so determined the purpose to execute justice upon them, that I was urged to furnish for use to the government, immediately, a brief official report of the campaign. So anxious were the authorities that this report should be in their possession at once, that General Halleck urged me to remain that day in Washington to make it out. I told him that my papers, dispatches, &c., were at my camp, near Ball's Cross Roads, and that I could not well make a report without having them by me. He still urged me to remain with great persistence, but I finally returned to my camp, and proceeded to make out my report. The next day it was delivered to General Halleck, but by that time influences of questionable character, and transactions of most unquestionable impropriety which were well known at the time, had entirely changed the purposes of the authorities. It is not necessary, and perhaps would scarcely be in place, for me to recount these things here, and I shall therefore only speak of results which followed. The first result was that my report, so urgently demanded the day before in order that the facts might at once be laid before the country and made the basis of such action as justice demanded, it was resolved to suppress. The reason for this change of purpose was sufficiently apparent. The influences and transactions to which I refer seemed to the authorities to make it essential to the temporary interests of the government that General McClellan should be reassigned to the command, and, as a result, that the bad faith and bad conduct which the government was so anxious the day before to expose should, at least for the present, be overlooked.

Here we have it clearly stated and confessed by General Pope himself that the alarm and distrust which his dispatch of September 1, from Centreville, excited in the mind of the government at alleged treachery and infidelity among the generals of the Army of the Potomac led directly to the avowed purpose of executing justice upon them, or, at least, as the event showed, of finding a victim among them, and that it was to reports and information to be furnished in hot haste by General Pope, the author of the charges, that they looked for material upon which to base and conduct a prosecution. If General Porter was really innocent, and if those were the motives in which his prosecution originated, and which sustained and carried it through to the end, then we are not without proof upon the record of the truth of what has been so often observed, that General Porter stands in the position of a scape-goat for the calamities that had overwhelmed the people, and the transgressions which had been committed, or which were supposed to have been committed, not by him, but by others. And that that matter may be tested, I have looked into the original authority, to see what the real character of the scape-goat was; and for that purpose I beg leave to read three or four verses from the sixteenth chapter of Leviticus, where the matter is fully set forth:

And Aaron shall cast lots upon the two goats; one lot for the Lord, and the other lot for the scape-goat.

And Aaron shall bring the goat upon which the Lord's lot fell, and offer him for a sin offering.

But the goat, on which the lot fell to be the scape-goat, shall be presented alive—

Which may account for the failure of the court-martial to sentence him to be shot—

before the Lord, to make an atonement with him, *and to let him go for a scape-goat into the wilderness.*

1716 And Aaron shall lay both his hands upon the head of the live goat, and confess over him all the iniquities of the children of Israel, and all their transgressions in all their sins, putting them upon the head of the goat, and shall send him away by the hand of a fit man into the wilderness.

And the goat shall bear upon him all their iniquities unto a land not inhabited: and he shall let go the goat in the wilderness.

And he that let go the goat for the scape-goat shall wash his clothes, and bathe his flesh in water, *and afterward come into the camp.*

Now, who is the Aaron of this dramatic performance may easily be conjectured; and how can there be much more doubt as to who fills the rôle of the man who let go the goat for the scape-goat out into the wilderness, for it was he *who thereby secured the washing of his own hands, and returned into the camp, by which I understand that he continued in the military service of the United States.*

OPERATIONS OF AUGUST 29.

Now we reach the matters of the 29th of August, which I shall endeavor to dispose of as briefly as possible.

The situation on the morning of the 29th of August is best displayed by the dispatches of General Pope, and whatever we can extract from those certainly the Recorder will not object to. The movement of that day originated with a dispatch from General Pope, at a very early hour in the morning, an hour which he is fond of describing as the earliest blush of dawn—3 a. m. The situation then was that General Porter was at Bristoe with his corps, where he had been directed the day before to wait and rest his troops, their fatigued condition being recognized by the general in command. General Pope had gone on expecting to concentrate his forces, as I understand, at Centreville, behind Bull Run, excepting those which, as he then thought, lay between General Jackson and Thoroughfare Gap, consisting of McDowell's and Sigel's troops. He was of the belief that, if he had a fight, it should be, certainly, some where between Gainesville and Centreville; and I think the dispatches will show you that he expected to have this fight behind Bull Run. Now, quite a contest has been made here as to whether General McDowell disclosed to General Porter that that was the original purpose that morning of the commander-in-chief, or whether that had been his view on the previous day. But if the dispatches of General Pope show you that he expected the fight to be at Centreville, which is behind Bull Run, all that controversy falls out of the case. He sends, at three o'clock in the morning, from his headquarters near Bull Run, this dispatch to General Porter:

General McDowell has intercepted the retreat of Jackson; Sigel is immediately on the right of McDowell.

He was in entire unconsciousness of the retreat of McDowell's force from behind Jackson, although it had then actually taken place two hours before.

Kearney and Hooker march to attack the enemy's rear at early dawn; Major-General Pope directs you to move *upon Centreville* at the first dawn of day with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. *A severe engagement is likely to take place—*

[That is, of course, at Centreville—]

and your presence is necessary.

The Recorder has laid great stress upon this statement in the dispatch, that a severe engagement is likely to take place, and that General Porter's presence was necessary. So do I. But in a different direc-
1717 tion, I call it to the attention of the Board, as declaring as emphatically as words could declare that he expected Porter to be then at Centreville, for the purpose of taking part in an engagement to be had there. That was, undoubtedly, his expectation. The heights of Centreville was the place where he might hope, if he could find Jackson there, for a successful engagement, as Jackson had McDowell and Ricketts behind him. It so happened, however, that at midnight of the previous day, the whole groundwork of the movement contemplated by this dispatch, without his knowing it, had fallen out; instead of McDowell having intercepted the retreat of Jackson, that had failed, and his force, as I have said, and as it has been so often said, had moved away, leaving the way open behind Jackson, at a time, too, when everybody knows that the main army of Lee was pressing forward to join him, and was coming through Thoroughfare Gap. Now, the Board will observe that the suspicion had not yet reached General Pope, and no rumor had reached him, that McDowell was not, where this dispatch places him, behind Jackson, cutting him off from any relief from the west. General Porter proceeded with the execution of that order. He advanced from Bristoe as soon as could be done after the receipt of this order, in the direction of Centreville, and his force arrived at Manassas Junction, or Manassas Station, or a little beyond; and he, himself, reached Bull Run, or very near Bull Run, where it has been testified he found a messenger from General Pope that morning.

The Recorder has somewhat gratuitously, I think, indicated that there was some delay in the execution of this order on the part of General Porter. It does not seem to me so, and it is not worth while to discuss it. It has been ably and fully discussed by Mr. Maltby. I challenge a careful inspection of the record, to bear me out in the proposition that this order was faithfully carried out by General Porter to the best of his ability, and that he was making rapid headway to the point to which he was directed, to Centreville, there to take part in a severe engagement, expected by General Pope to take place, when the whole movement in that direction was counteracted by the receipt of the next dispatch, which turned him to the right about face to go back upon the road upon which he had come, and to proceed upon Gainesville—the explanation of this being, of course, that General Pope, in the mean time, between 3 a. m., when he wrote the dispatch which I have already read, and about eight or nine o'clock, when he wrote this next dispatch which I am about to read, had received news of the catastrophe which had taken place by the falling back of McDowell's force from behind Jackson. You will see that General Pope, in those six hours, had got from near Bull Run, where his headquarters were during the night and at 3 a. m. to Centreville, where this was written, probably at about eight o'clock—from eight to nine o'clock.

CENTREVILLE, *August 29th*, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious, or we shall lose much.

JOHN POPE,
Major-General Commanding.

Major-General FITZ-JOHN PORTER.

It is observable that in this order there is no mention of General McDowell. The first dispatch had stated that McDowell had inter-

cepted the retreat of Jackson. This dispatch, giving a new direction to the movements of Porter's corps because of the departure of King's force from the turnpike, makes no reference to McDowell, or his great army corps, except what is implied in the order to Porter to take
1718 King's division with him. Now, the first question is, what was the reason of that? The reason is manifest, in the conspicuous fact upon this record, that McDowell at that moment was lost—lost to the commanding general, lost to the Army, lost to all the world, and had been lost since four o'clock on the afternoon before; and it was necessary that King's division, which had fallen back in the immediate neighborhood of Manassas Junction where Porter was, should be put under competent command, and it was, therefore, placed under the command of General Porter. That being so is demonstrated by a map which I propose to offer as a part of my argument, showing the movements of McDowell personally from four o'clock on the afternoon of the 28th until midnight, or after midnight of the 28th, and where he was during that most important period, while his troops, in defiance of positive orders, were abandoning the very key of the Federal position and throwing away the only chance of the capture of Jackson. His testimony is that, before the fight, on the turnpike between King's division and Ewell's on the evening of the 28th, being evidently in a state of great anxiety in consequence of the situation, he went in search of General Pope, and he went for the reason that he was better informed as to the situation than General Pope, and that General Pope would be benefited by a little conversation with him. That, I believe, is his exact language. He started out at four o'clock from a place on the turnpike a little west of where the fight of the 28th was, and he made this remarkable ride which will rank in history with Sheridan's ride, although under different circumstances.

[The map was here explained to the Board, and will be found in the appendix as map F.]

Thus the temporary disappearance of General McDowell is the obvious reason for this order to put his troops under the command of General Porter.

Now, the immediate military object of this order is one upon which I take issue with the Recorder. The Recorder says that the intent was to get this force of King's division, which had retreated from the turnpike, increased by Porter's corps, to which it was now added, back to the very place of the battle of the night before between King and Ewell's force, which we will suppose to be Gibbon's woods, a very familiar ground to us now through the map, and on the pike just west of Groveton. Well, I do not know what military object there could have been in getting them back there, if he wished to retrieve the position that had been lost the night before by their retreat, because the enemy were then understood by everybody to be in possession of that battle-ground, from which our forces had retreated. No; the object of the order is evident to everybody. As has been asserted here, on our part, and as has always been asserted by General Porter—you will find it in his preliminary statement—it was to get this increased force back behind the rebel position, between them and Thoroughfare Gap, between them and, if possible, Gainesville, and at Gainesville, which was the commanding position of the whole situation. There has been an attempt made to show, by General Gibbon, that it was to put the increased force right back into Gibbon's woods; and you know that the whole argument of the Recorder on this point was that, when he got to Dawkins' Branch, Porter was pointed a way proceeding straight up to Gibbon's woods, and that he

ought to have gone there. General Gibbon does not say any such thing. I desire to call the attention of the Board to exactly what he does say.

General Gibbon, on page 243 of the new record, says: He having been concerned in the retreat, and being desirous that the mis-
1719 chievous consequences of it should be remedied, went early in the morning in search of General Pope:

Q. Describe what occurred at that interview.—A. I told him what had occurred the night before, and that the division had left the line of the Warrenton pike, and that I had ridden over and gave him the information, because the absence of troops from that point left the way open for Lee's army to join Jackson, and that I thought it was a matter of importance that he should have this information, inasmuch as I presumed if he had any troops to send out to that point, that he would dispatch them. After some little conversation, the particulars of which I do not recall, he turned to Colonel Ruggles, his adjutant-general, and directed him to write an order directing General Porter to move with his corps out on the Gainesville road, and take King's division with him, and gave it to me to let me carry it back to General Porter. The order was given. I was furnished with a fresh horse and started back. I rode rapidly as I could to Manassas Junction, and near the junction met General Porter, and delivered him the order.

Q. Before leaving the conversation with General Pope, do you recollect General Pope stating to you what he was doing in reference to this probable approach of the enemy through Thoroughfare Gap, with reference to the disposition of his troops? I wish you would try to recall what was said in that conversation. You informed him, as I understand, that your division, by leaving the Warrenton pike, had left the road open for Lee's army to get up and unite with Jackson. Now, what did General Pope say, if anything, in reference to the disposition he was making of his troops, or had made of them, with a view to prevent that?—A. General Pope did not seem to appreciate, I thought, the fact which I informed him of, that the absence of those troops from the Warrenton turnpike left the door open to Lee's army to come up. He said, "Why, we are pressing Jackson now!" I cannot pretend to repeat the words.

General Pope apparently failing fully to realize the effect of the falling back of King's division, and still hanging on to the idea that they were pressing Jackson in front.

As I say, General Pope did not seem to appreciate the importance of what I regarded as fatal; that is, the absence of troops from the Warrenton turnpike, between the detachment of Jackson and Lee's main army. To my mind, the fact that he was pressing Jackson from the east did not appear conclusive at all that he could ruin Jackson simply because he was pressing him back to Lee's main army.

That is important in two aspects. It shows that General Pope understood perfectly well that it was not any small detachment of the rebel force that was pressing through Thoroughfare Gap to relieve Jackson, but that it was the main army of Lee, from which Jackson's force was a detachment. General Porter received this order at Manassas Station, or thereabouts, and just then, singularly enough, General McDowell appears. Well, what was the situation? It has been claimed that they fell under that article of war which provides that where forces under different commanders are united upon a march, accidentally or otherwise, the senior in rank takes command. That was not the situation. General McDowell had no troops. King's division, which was the only one of his corps that was then there, had been given to Porter, and he, under his responsibility as corps commander, had been compelled to take command of it with his own. The conduct of both generals shows perfectly well that that was recognized, although I know that General McDowell has intimated an opinion that he did have command, or might have commanded. Not so. Because if he claimed command, why did he not lead the column? Why did he ask Porter, as a favor, that he would put King on his right in forming his line, so that he could have him when General Pope said so? Why did he linger behind at Manas-

sas Station, when there was this important order, important upon its face, to move on Gainesville and be expeditious, or they would lose much—why did he linger at Manassas Junction? That is fully explained from his own testimony, and from Pope's testimony, namely, that he was impressed with his situation and fully realized it; that while
1720 he might be senior in rank to General Porter, yet King's division had been taken from him and turned over to Porter, just as these important movements were taking place. How distasteful this was to McDowell and how embarrassing to Porter appears from their interview near Manassas Station. You can conceive how awkward and trying it was to both of them; under what restraint it necessarily placed both of them; how embarrassing to McDowell; and how ten times more so to General Porter. Well, General McDowell, to cure that, writes his note to General Pope, protesting against King's division being taken from him, and asking that it might be restored; and then from that follows the joint order, the violation of which is the subject now under consideration.

THE JOINT ORDER TO M'DOWELL AND PORTER.

HEADQUARTERS ARMY OF VIRGINIA.
Centreville, August 29, 1862.

You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders, of any description, to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp, last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was, until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to join the other divisions of his corps, as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view, that the troops must occupy a position from which they can reach Bull Run to-night, or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night, or the next day. My own headquarters will, for the present, be with Heintzelman's corps, or at this place.

JOHN POPE,
Major-General Commanding.

Generals McDOWELL and PORTER.

This joint order was not received until General Porter had reached the front at Dawkins' Branch, and the messenger who brought it, Dr. Abbott, declared that, bringing duplicates of it, which he took from General Pope about ten o'clock in the morning, he found General McDowell somewhere between Manassas Junction and Dawkins' Branch, and delivered him his copy and then rode rapidly on to Porter, found him at the head of the column at Dawkins' Branch and gave him his copy. They were about a mile apart. That would very nearly account for the situation, because General McDowell says that at that time, at least, a full brigade of King's division marching behind Porter's had passed Bethlehem church and had got out, as I understand it, very near the Five Fork's road, which the Recorder has now made the wonderful discovery was a road which somebody ought to have taken. Now, when General McDowell and General Porter were together near Manassas Station, and had this unpleasant talk—of course, it must have been un-

pleasant to both of them; nothing could have been more disagreeable—General McDowell then declared his willingness to recognize the situation, stating that King's division had been taken from him and given to General Porter, and expressed the wish that Porter, when he formed his line of battle, would place King's division upon the right of him, so that it would connect with his own force, which was under-
1721 stood to be south of the Warrenton pike, or up at the Warrenton pike in the neighborhood of Groveton. Now, when General McDowell gets his copy of the joint order he rides immediately forward, as he says, and overtakes General Porter. How soon he reached Porter, after the joint order reached Porter, you can imagine, because the messenger was only a mile away, and he followed the messenger, and must have reached General Porter almost immediately with the joint order.

Before considering the question of the joint order, and as there is no fault found with Porter's conduct up to the time, at any rate, of the receipt of that order, and as there has never been any complaint of his execution, so far as he could, of this previous order to push forward with his own force and King's division upon Gainesville, I want to call the attention of the Board to what he did under that order, before the receipt of the joint order, because it seems to me that is very important; it discloses to us the military situation at which he had arrived, and the animus which inspired him under that order, under his instructions to move upon Gainesville. Now, if Porter had any intention of holding back that day, it seems to me that is the time when he would have manifested it, is it not? But what happened? In the first place, it is necessary to understand the point at which he had arrived. General Warren has fully described to the court his knowledge of the situation, and the Board has knowledge of it, as depicted by the map, and this makes it unnecessary for me to describe the stronghold at Dawkins' Branch, which Porter had reached, or that other similar stronghold, on the other side of that branch, which was already in possession of the army of Longstreet. Beyond the valley was this other commanding situation, not unlike that at Dawkins' Branch, which he had already reached, and the bed of which stream was the dividing valley. To the right stretched the ravine, through which the stream continued, and an open space beyond that spread onward toward Groveton, fully commanded in all its parts by the batteries of Longstreet from the opposite stronghold which he occupied. Not all known to General Porter, of course, for he had never been there before, but sufficiently known, as a glance at the map will show, to enable him to realize the importance and strength of that position, which he had reached, and of the similar position in front of him, which the enemy already held. Then, it appears, they halted. Has that halt ever been complained of? Not in the least. McDowell says that "up to twelve o'clock"—which must have been from half an hour to an hour after the halt—"Porter's movements were unexceptionable." What kind of a halt was it? Was it ordered by General Porter? That does not appear. But the reason appears: it was that necessary, spontaneous, involuntary halt that any column of troops, I suppose, makes when they come into the actual presence of the enemy, placed in a position corresponding and opposite to that which they had themselves reached, and which, in this instance, was quite as inaccessible to Porter as Porter's own position on Dawkins' Branch was inaccessible, in a military point of view, to the enemy across the stream. Now, what does General Porter do? You will observe that there is a good deal of time from the arrival of General Porter at the head of his column at Daw-

kins' Branch—he was near the head of the column when it halted—there is a good deal of time between that and General McDowell's arrival, and the arrival of the joint order. He is not yet under the direction of the joint order. His direction was to move upon Gainesville by the order under which he was then acting. The road was the road to Gainesville. What did he do? He prepared, as I suppose any wise commander would, to move upon Gainesville, according
1722 to the order—to continue to move upon Gainesville. He deployed his leading division, Morell's on the right and left of the road; he had Sykes' division then drawn up in column behind Morell; he sent General Butterfield with his brigade across Dawkins' Branch, where this enemy was in sight upon the opposite hill; he sent out his line of skirmishers under Colonel Marshall. That was the situation when the joint order and General McDowell arrived.

Now, was that right? Did that show zeal and earnestness and skill on his part? It is for you to judge. General McDowell testifies emphatically that it was all right. Now, the issue between ourselves and the Recorder is right here; he says that without and independent of the joint order, Porter was under orders from McDowell; there, says the Recorder, was his mistake; that duty required him to march up this road, as he calls it, from Deats to Groveton, a road which is no road, a road which I think is a fiction of the Recorder's imagination. General Warren, when he went to make a map, found none there; I do not understand that the Recorder, when he went to make his personal inspection, found any road there; but somebody told him there had been a road there, so he marked it down upon his map. It is not at all material, as it seems to me, for the deciding of this issue, whether there was a road there or not. If there was no enemy opposite, the country was all one road, for all the way to Gibbon's wood was open, and this resort to an imaginary road is wholly unnecessary; but on the other hand, if there was an enemy in force upon the opposite rise of ground, then it does not matter, I suppose, whether there is or ever was a road there or not. If there was a road, we suppose they could not march by the flank exposed to this enemy in force upon the opposite rise. On that matter the testimony of General Warren as to what was the proper mode, supposing that a military commander arrived with a corps at Dawkins' Branch, in that situation, finding a force upon the opposite rise of ground, knowing from the cannonading at Groveton that something of a hostile character was going on there, as to what was the proper mode if he wished to make a movement to the right, a movement to get over to Groveton to take part in what was then going on—how he was to do it—that testimony was so important that I beg now to call it to the attention of the Board. It is a long while since it was taken, but it explains the situation very exactly, and is found on page 43 of the record. He is being carefully examined by the president of the Board:

Q. What is the distance, measured along the ridge occupied by Morell, from the wagon-road to the railroad?—A. A little over half a mile.

Q. Along the same general line from the railroad to the wagon-road above; what is the name of that road?—A. The Warrenton and Alexandria road. That would be a little more than three-quarters of a mile.

Q. Bearing a little more to the north, keeping the military position from Morell's right, following along the edge of the woods to the north?—A. About three-quarters of a mile. The ridge (on Dawkins' Branch) continues along till about this place (James Nickerson's) facing this valley. Then these little ridges run on in this direction (Five Forks).

Q. If you turn to the north, would there be any position along there from Morell's right?—A. There would be no good position anywhere in that direction until this road was obtained (the old Warrenton, Alexandria, and Washington road).

Q. The natural position then would be around here if you had to lay a defensive line? (Around and behind Five Forks).—A. If I had to hold Porter's position permanently, with time to prepare to do so, I should have let the left rest where it was, extend along the ridge to the right to about the railroad, then take the highest line to the east and rest the right on Mount Pone; then I would slash all the timber in front of my line for at least half a mile.

1723 That was something, I suppose, not to be thought of by one who was ordered to move towards Gainesville.

Q. What is the character of this country between the forest and the Sudley Spring road?—A. Farming country; descending very considerably towards the southeast.

Q. Could a column of troops with artillery move through there?—A. Yes; but they would have to make crossings for streams and little ditches and things of that kind.

Q. Indicate on the map, for present information, where Reynolds was on the 29th, if you have such information.—A. I have not it very definite, but it was somewhere in these woods (between Chinn's and Groveton).

Q. Can you give the general direction of his line on that day?—A. If he had met the skirmish line, the advance line of Jackson, early in the day, his line would face north; if late in the day he had seen the approach of Longstreet, he probably would have faced westward.

Q. About how far from Groveton was his left?—A. That I cannot say; I cannot say where his left or right was, or where he faced.

Q. Give us now the distance from Groveton, the shortest line, where Compton lane strikes the old Warrenton road?—A. About a mile and a half. This map will enable you to see very easily what roads the army used independent of these routes. There were no fences then, or if there were, armies disregarded them.

Q. Give the distance from the junction of the Gainesville road with the Sudley road to New Market, and thence to Compton's house?—A. Three miles to New Market, or a little over; to Compton's lane, a little over four miles.

Now, here is the important part:

Q. What is the nature of this position with respect to an advance of an enemy from the west (pointing to the Compton house); I do not mean that exact point, but this general position between the headwaters of Dawkins' Branch and of Young's Branch?—A. You have got to suppose the position of the enemy. Suppose the advance is from the west, on the old Warrenton and Alexandria road—there really is no good line. This would be the line on the ridge between Chinn's Branch and Holkum Branch, but it would place both flanks into the woods, and render them liable to be got around by the enemy without his being seen. In the woods the flanks would have no effective fire. The natural position to resist an advance from the west is here (parallel to the Sudley Springs road, between Wheeler's and Dogan's); not a very good position either.

Q. Not a good position anywhere there?—A. No, sir; but that is the one that we held finally, and that we held on the night of the 30th.

Q. Is *this* ground here, generally speaking, commanded by this?—A. The most prominent ridge runs this way (from east to west, from Britt's to Compton's). If you form a line *here*, the enemy coming from the west could flank readily at Britt's. It is pretty nearly the same level. It is a high ridge and *this* ridge east of Carraco's is high.

* * * * * * *

Q. I understood this railroad (Manassas Gap Railroad) is such that infantry could move along in column?—A. Yes, sir; rather by the flank than column.

Q. Could they deploy along Dawkins' Branch here by the road from the woods?—A. Yes; I think they might.

Q. Could they see the valley in front of them some hundreds of yards?—A. O, yes; they could see part of it, and all of the cleared places here (on the southwest side of the high ridge which lies southeast of Carraco's).

Q. The only difficulty across here would be the occupation of these heights by the enemy, as I understand?—A. Yes; that would be the greatest difficulty.

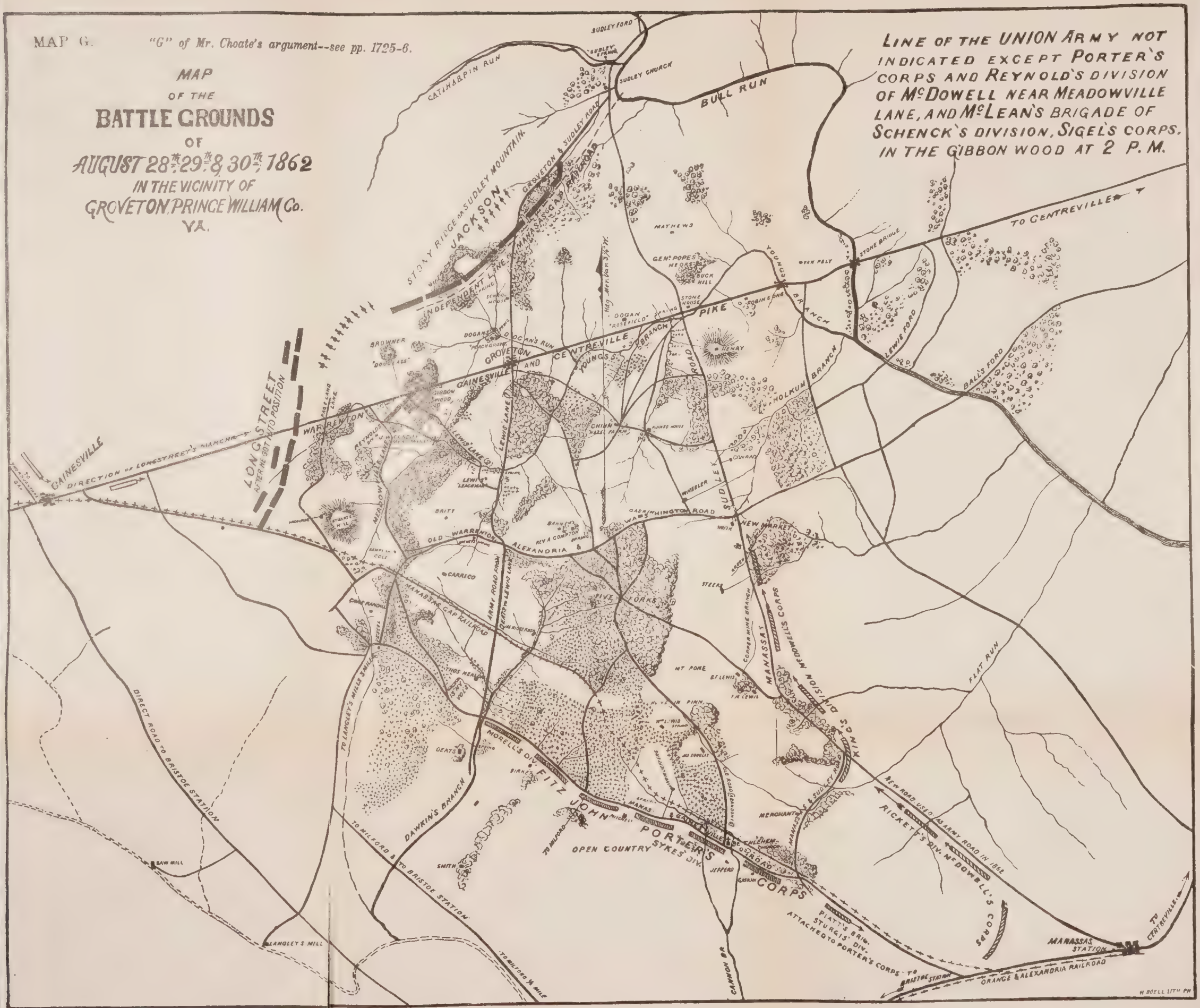
Q. If you were forced to connect this point where General Porter advanced with some military position in the vicinity of Groveton, what point would you first occupy? What would you regard as the key of that position to be first occupied, being compelled by the situation of the army to hold this point or some point near Groveton?—Could you get to that place more quickly by coming this way (around by the Sudley road), taking into account the uncertainty as to what might be in your front?—A.

1724 That, of course, would be a problem I cannot answer. I know very well—take the case as it stood—that a movement made direct from Porter's position toward Groveton on that day would probably have brought on a general battle there. Of course, this occupation of this ridge, either at Britt's or Compton's would only have been possible on the supposition that we whipped the enemy.

MAP G. "G" of Mr. Choate's argument--see pp. 1725-6.

MAP OF THE BATTLE GROUNDS OF AUGUST 28th, 29th & 30th, 1862 IN THE VICINITY OF GROVETON, PRINCE WILLIAM Co. VA.

LINE OF THE UNION ARMY NOT INDICATED EXCEPT PORTER'S CORPS AND REYNOLD'S DIVISION OF McDOWELL NEAR MEADOWVILLE LANE, AND McLEAN'S BRIGADE OF SCHENCK'S DIVISION, SIGEL'S CORPS, IN THE GIBBON WOOD AT 2 P.M.



Q. Knowing that part of your army was near Groveton and you arrived *here*, at Porter's position, with the head of your column, what was the first move to make to secure the position of the whole army?—A. I should have withdrawn the whole army to the east of Bull Run.

Q. Suppose you had not the power to do that? Suppose your force *here*, where General Porter was, was ordered to connect with the other troops, what would you have to do to accomplish that?—A. I should think I had a very desperate thing to do.

Q. Suppose you had 30,000 men, and formed yourself with the head of your column on this road to Gainesville, and information that 30,000 other men of your own army were *here* (east of Groveton) and you were ordered to connect with them so as to form a continuous line of battle?—A. If I had an enemy in here, on the northwest side of Dawkins' Branch, I should have moved against him to see what he had (toward Vessel's). I don't suppose that I would be compelled to risk my 30,000 men to save the other 30,000; the risk would have to be equally divided and not to risk the destruction of this to save that which could, without danger, be drawn to a safe place, but I should have certainly wanted to see what was the force of the enemy in my immediate vicinity before exposing my flank to his line of battle.

Q Considering the general extent of this position, as you now know it, how many troops would you want to make that attack?—A. I should feel that reasonably I ought to have a force here superior to the enemy.

Q. About what force of the enemy would occupy this position, as you now know it?

(Vessel's toward Carraco and Lewis.)

A. As I now know it, I now know that all the forces from Groveton could have been brought up, which probably would have been 30,000 men; that an encounter here in the woods would not have been successful unless we could have been able to whip 30,000 men.

Q. You would not have felt at liberty to have made that attack with less than 30,000?—A. No; not to engage seriously. At any time that you like you can feel the enemy with a force that you cannot afford to spare.

Q. In the case supposed, would not you have taken this course and keep control of this ground rather than by attempting to force the enemy's position; you have here a ridge of high ground separating the waters of Dawkins' Branch from the waters of Young's Branch. To fight a battle in as unfavorable a position as that you must have control of that ground?—A. Yes, sir.

Q. Then this position was a bad one to occupy?—A. It was a bad one to move from, but not a bad one to defend.

Q. If you had to fight a battle against an enemy occupying this general position, and difficult to attack with less than 30,000 men, would not you have moved to occupy this position, so as to hold command of the ground between the two positions you now occupy?—A. I don't think I would, because I think the enemy, seeing my object, would get there first. He would get command of that position before I could, in the position in which we were placed here.

Q. Suppose you were ordered to connect with the troops at Groveton, practically; you see no alternative but to move front and fight?—A. Yes; move to the front and attack.

Q. You think it would not be practicable to move a portion of your troops here and occupy this place (near Compton's)?—A. I wouldn't do it. I have seen such attempts made. A great deal depends upon who do it; what kind of troops you have. I hold it to be a general rule to never try to establish a line of battle that the enemy have any chance to get hold of before you do.

Q. Success, then, depends upon a question of time; whether you were there before the enemy?—A. Yes. Well, it comes under the general head of military principles never to establish your point of concentration inside of the enemy's line.

So he goes on further at greater length and to the same effect, that if
he desired to move over to the right and occupy the ground
1725 which it is claimed Porter should have occupied, the way to do
it, in the eye of a military man, was to move over and feel and attack the enemy in front of you, clear them out from this rise of ground on the opposite side of Dawkins' Branch, advance over Stuart's Hill, about which so much has been said, and then you would be in a position to move upon Groveton. Now, we are obliged to rely upon the testimony of a skillful and accomplished officer, as to whose capacity there can be no question in a matter of engineering and military movements; and we are content to rely upon the testimony of General Warren in the obvious situation upon the stronghold that General Porter had arrived

at, as demonstrating the entire propriety of his movements before the receipt of the joint order, and before the arrival of McDowell; and so clear is it, as we suppose, to military men that Porter's actual movements were dictated by the highest military intelligence and skill, that it is the reason why McDowell has always said that Porter committed no fault until after his own departure from the scene, and everybody connected with the case heretofore has admitted that that is so. But now, for the first time, the learned Recorder advances the theory that all this is wrong; that, independent of the joint order, independent of anything, independent of having that interview with McDowell, and especially after that interview, that it was Porter's duty to have marched to the right immediately on arrival at Dawkins' Branch, and to occupy the battle-ground of the night before, because the purpose of the order was to move to Gibbon's wood, the scene of the last night's fight. Now, the Recorder can fight a very good battle, if you get the enemy out of the way, I will agree. If there had been no enemy, any boy could have seen that when he got to Dawkins' Branch, if he was in sight of Groveton, and there was no enemy commanding the heights opposite, why, he could go to Groveton. The Recorder has gone to great effort to discover this road. Singularly enough, some kind individual, apparently not connected with this case, but a student of it, has made and circulated a map which, by a happy coincidence, exactly conforms to the Recorder's idea of the situation, and of what then should have been done.

The RECORDER. I should like to ask if that is in evidence?

Mr. CHOATE. No; I propose to ask to have it incorporated as a part of my argument.

The RECORDER. As an historical illustration?

Mr. CHOATE. As a geographical illustration. It is a singular piece of prophetic foresight in whoever prepared this map that he should so exactly have hit the views afterwards expressed by the learned Recorder. I suppose I can have it incorporated as a part of my argument, because it shows exactly the condition in which the learned Recorder's proposed movement would be a right one, and why it would not be exactly the wrong one, as demonstrated by General Warren. It was wholly unnecessary for the delineator of this map to lay out a broad army road from Deats' to Lewis Lane, through the valley of Dawkins' Branch, because on either condition it does not make any difference whether there was a road there or not. This road, known only to Lieutenant Brooke and the Recorder, occupies a very conspicuous position upon this map. Then, a very important condition, a necessary condition, is to get the troops out of the way from the field in front, from the high ground corresponding to Dawkins' Branch, across on the northwest side. That is most happily and successfully done by the projector of this map, by withdrawing the whole of Longstreet's force, after he had got in position, and we have proved that when Porter arrived at Dawkins' Branch he had substantially got in position—withdrawing all those forces in the
1726 rear of Pageland Lane, and placing them exactly half way between Gainesville and Groveton, a most extraordinary thing to do with a rebel army under such an accomplished general as Lee, with such an aid as Longstreet, after they had been driving through Gainesville three or four hours before, at the top of their speed, for the purpose of re enforcing Jackson at Groveton. Then another necessary part of the condition is to compress the rebel force into such a narrow place into the awkward position into which he has drawn them, or a very large part of them, up behind the rebel batteries that were posted between Jackson and Longstreet. What good any of them could do

there it is impossible to see, because it is demonstrated by the evidence that that was very low ground, and they would have had to fire through several ridges in order to reach anybody anywhere. That is so happily in accordance with the views of the Recorder, that I shall ask to have it incorporated as illustrative of my argument.

[This map will be found in Appendix as Map G.]

THE RECEIPT OF JOINT ORDER AND M'DOWELL'S ARRIVAL.

Now, what happened when General McDowell came up? for that is one of the important questions. General McDowell, we have proved—and this he has not contradicted, although he says he doesn't recollect it—General McDowell rushes up with the joint order (which, of course, having been just received, is fresh in the minds of both and does not need much discussion); he comes quickly up, having now, however, accomplished a purpose which he had in view in writing to General Pope in the morning. He has the joint order which now, under the Articles of War, places him for the first time in command of all the forces. Porter now, and until they separate, is his mere lieutenant. What does he do? He rushes up and sees what is going on, does he not? He says so. *He says that the skirmishers were already engaged.* What does that mean? Engaged with whom? Why, engaged with the skirmishers of the rebel army on the opposite height. That he saw himself. He is informed that shots have been exchanged. What does he say? He says, "Porter, you are too far out; this is no place to the fight a battle." What did he mean? Here we come first to the consideration of the joint order, as those generals considered it. Now, what was deemed too far out by that joint order? Why, there was this:

> One thing must be held in view, that the troops must occupy a position from which they can reach Bull Run by night or by morning. The indications are that the whole force of the enemy is moving in this direction, at a pace that will bring them here by to-morrow night or the next day.

Another passage which you will recollect is:

> It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies.

Such was the situation. Here was Porter, a mere lieutenant to McDowell from the moment of the latter's arrival, after the receipt of the joint order.

We proved by five witnesses that McDowell gave him this order, "Porter, you are too far out; this is no place to fight a battle"—two of them new witnesses introduced upon this trial, in addition to those who testified before. Was it binding on Porter? Nobody questions. Was it given? Nobody can doubt it. Now, what was he to do? It thwarted his plan, which had been to feel and press the enemy, as he was already doing by Butterfield, and the express testimony is that he obeys the order and withdraws Butterfield, leaving his skirmish line out.

1727 Now, what next happened? What was there in the joint order that they had to look to?

> You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville.

Let me pause there to ask the Board one question which I do not quite understand. This joint order was written by General Pope, at Centreville, at ten o'clock in the morning. Sigel, at least, under his directions, had commenced a severe skirmish with the enemy, on the turn-

pike, at six o'clock. Tell me, if you can, why no reference is made to that in this dispatch. This dispatch, as expressed, is an order of pursuit, and not an order of battle. Was it possible that General Pope, the responsible commander of all those forces, was ignorant, four hours after it had taken place, of an important skirmish between Sigel's force and Jackson's force at Groveton? Was it possible that, knowing it, he left it intentionally out of this dispatch, in so important a communication to McDowell and Porter? But he did leave it out. He does not indicate the least suspicion on his part that an immediate action is impending. He makes it an order of pursuit, as I think you will see.

I desire that as soon as communicatien is established between this force and your own, the whole command shall halt.

Halt with what view? The next word is:

It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies.

Now, in respect to this order, if this was in the minds of both generals when General McDowell rode up, what did General McDowell mean by saying, "You are too far out; this is no place to fight a battle"? Did not he mean that the time had come, hearing this firing on the right, at Groveton, and knowing that there the Federal forces had probably stopped, did not he mean to indicate—was it not plain upon the face of the situation, without even this indication, that when he said "You are too far out," he meant that this was the time and the place to halt, according to the directions of the joint order? I suppose so. Then, what was the next thing? The next thing was to obey the joint order, unless they should see fit to vary in the exercise of that discretion which was now McDowell's direction in carrying it out.

As soon as communication is established between this force and your own, the whole command shall halt.

Well, communication was not established; but there was the place, according to General McDowell's indication, to make a communication—not connection. The word is not "connection," which I understand has a very different military significance from "communication"; but communication, at least, was possible. Now, what do they do? They proceeded through that unknown woods to a point down here [on the railroad, nearly half a mile east of Dawkins' Branch], to see what there was, and how it was practicable to make communication, the remaining duty enjoined by the joint order. They go over across the railroad on horseback, and come down and water their horses in this stream, which I do not consider must have been necessarily Dawkins' Branch, but some stream that ran into Dawkins' Branch.

Now, irrespective of the dispute which appears to be in the case, as to what orders General McDowell gave when he left, let us see what was determined at any rate, beyond all dispute. What were they there for?

What could be the only object of their riding there? Of course
1728 to see about this communication with Heintzelman, Sigel, and Reynolds, on the left of the Federal troops. They came back, didn't they? They found that that could not be done there, did they not, unless by this happy device of the Recorder, according to that map, which neither of them was soldier enough to think of? They found they could not do it. Now, it is suggested, and McDowell claims to have originated the idea, of his taking King's division around, which Porter testified in the McDowell court of inquiry that he perhaps first suggested. When they met at Dawkins' Branch, is it difficult to see how it actually took place? There is no doubt that the request to put King on his right had

been made in most urgent terms by General McDowell, aggrieved as he felt himself in the taking away of King's division at their unhappy conversation at Manassas Junction. Now, then, they come up to study this question of communication. McDowell has stopped Porter's advance. Porter says that he suggested it. Well, what does that mean? It was the suggestion of a lieutenant to his chief, was it not; a suggestion in deference to what had been said at Manassas Junction, before he had come under McDowell's command, was it not? And what did it amount to? Why—

As you cannot get through here in the face of that enemy in front of us, it is possible to carry out your idea by taking King's division around by the Sudley road, and come up and make this communication.

At any rate, that was the plan which McDowell, under his then responsibility, conceived; and it was apparently concurred in by General Porter at the moment, for he says, in his answer to Secretary Chandler, which is harped upon here as a contradiction, that, when McDowell left him, he understood that that was his idea. I cannot see any contradiction between his various statements on the subject. I wish I had time to read them all, and show you that they are exactly alike, and consistent with his statement as made here, and with the proved position as we claim it. I speak apart from anything that was said or any orders given. It was determined by McDowell, whose responsibility it was to determine, to take King around by the Sudley road. What was that for? What must Porter have understood it to be for? Was it for General McDowell's troops to wander up the Sudley road to the turnpike? No; it was to make the communication required by the joint order, by going around the Sudley road, and coming in on the ground between him and Reynolds. Is there any question, then, that communication would have been established as required by the joint order? Is there in the least a question that it never was established? Whose fault was it? Was it Porter's? Is not McDowell and his force the missing link throughout this day? There is a map here, as I have stated, as to what they did; and General McDowell did not come in and make a connection or communication. Was Porter to do it? Should they both do it? General McDowell left him there and went around by the Sudley Springs road to make the connection which the joint order required. It would have been a very stupid violation of the understanding if, while McDowell was going around, Porter has gone over and occupied the ground to which McDowell had agreed to go, would it not? So I say that Porter's conduct is justified without any reference to any dispute that there may be about what was said.

Let us see what became of McDowell's troops.

Now, I introduce a map, which I ask to have incorporated as part of my argument, to show where General McDowell went, upon the evidence, as I understand it. Here [along Dawkins' Branch, and on Manassas—
Gainesville road] is Porter's force; here, substantially in the
1729 same position, is where McDowell left him; here [the prolongation
north of Porter's line] is where the connection was to be made—
somewhere in a direct line from here to the federal force at Groveton. Now, did General McDowell ever come there? Here [just east of the Chinn house, on and near the Sudley Springs road] is King's division at six o'clock. There is not the least symptom of any attempt by McDowell to occupy that ground; Porter was abandoned by him here, and if it was the understanding that McDowell should make the connection or form on the left of Reynolds, that understanding was never carried out. This map will be found in Appendix as Map E.]

I desire now to call your attention to what was done under the joint order by General McDowell. One thing he certainly did do; he observed the precaution; he held it in view, that his part of the troops should occupy a position from which they could reach Bull Run that night. General Patrick, at pages 189 and 190 of the new record, states what was done. Let us see whether General McDowell carried out his purpose of making that connection. General Patrick was one of General McDowell's brigade commanders; he describes the march; he describes the orders. Now, I do not care whether it was McDowell's responsibility or Pope's responsibility; Pope was fighting that battle, and the responsibility lay between them for the movement of McDowell's forces after they got up on to the Sudley road; certainly not on General Porter.

While I had been at Bethlehem church, and in the interim between the time I had left Manassas and this time I had struck the Sudley Springs road, the other brigades of the division, under General Hatch, had moved on up the Sudley Springs road on the pike, so I was now in the rear instead of leading. They came up in this neighborhood, not very far from Conrad's, although I don't recollect the house. He left me after striking the Sudley Springs road, as near as I can recollect, near Conrad's, and was gone a little while, and came back, and then left again.

Q. Did McDowell give you any order there?

A. He left me here and told me to take this position on the road and to the left of it, I think. I was subsequently moved by General Hatch somewhere up near this road that runs to Chinn's house from the Sudley Springs road; it was under the cover of a wood.

Q. How far from the Sudley Springs road?

A. Close by, a little off to the left, a hundred or two hundred yards; that was my second position. The first assignment was by General McDowell, and the second by General Hatch. I was then moved, but by whose order I don't now recollect, in past the shoulder of this wood to the east of the Chinn house. I think that must have been by McDowell, to be near to support the Pennsylvania Reserve that were up here in this wood northwest of the Chinn house. All this time I was here, there was artillery fire going on, over along in this direction [north of the pike]. Apparently I could see from certain points what I afterwards learned to be the Dogan house. And in that neighborhood and along here there was firing. I saw the smoke and heard the discharges. In here [woods south of Young's Branch] I should say that at that time there was rather more wood and undergrowth and brush near this creek [Young's Branch] than is represented on the map, but I could not say. I was then ordered by a staff-officer of General Pope, I don't recollect who—a mounted staff-officer came up to me and said, "General Pope directs you to take your command down directly across to the pike in the neighborhood of that crest where Sigel is at work."

Q. Down by the Sudley Springs road?

A. No. Go right down across; and, particularly in the exhausted condition of the men, it was a very hard march to get down through there. We had reached this stream, Young's Branch, and part over it. I suppose that we were about two-thirds of the way to three-fourths, when a staff-officer of General McDowell——

Q. This the fifth order that you got?

A. Well, I don't know—directed me to return instantly to my former position, with some other instructions as to supporting Reynolds, and pushing in nearer to him farther into the west. I came back towards the Chinn house, but farther than I had been when I went in; I cannot tell exactly where I was. I saw Reynolds before I left, and had some conversation with him.

Q. Can you locate where you had that conversation with Reynolds and what
1730 he was doing?—A. It was in this neighborhood [south of Young's Branch and northwest of the Chinn house], just beyond the point where the wood-road crosses the arrow line. There was skirmishing going on in there.

Q. You got your brigade there, did you?—A. Yes.

Either the making of communication by the plan that McDowell agreed upon was impossible, or if possible, he did not accomplish it. Either alternative is equally satisfactory to us on behalf of General Porter.

DISOBEDIENCE OF THE JOINT ORDER.

Now, we come to this question of the disobedience of the joint order. As I understand this joint order, it does not direct an attack, it directs a pursuit. But, of course, the Recorder says that you cannot say it does not contemplate an attack. Any movement in pursuit of a flying enemy contemplates the possibility of an attack. But the not making an attack is not a disobedience to the joint order; that is a disobedience to the military rules that control the situation. How was it in this case? It has never been claimed by anybody, by General McDowell, or General Pope, or by Judge-Advocate Holt, or by the Recorder, that the joint order, taken by itself, was disobeyed. Not a bit of it. What is the claim? Why, that the joint order as modified by General McDowell was disobeyed, asserting the right of McDowell on leaving Porter to modify it. So the Judge-Advocate, and General Pope, and General McDowell say that a violation of the joint order was committed; a violation of the joint order, as modified by McDowell, because General McDowell directed him to make an attack. Now, what does the learned Recorder say? He says that Porter violated the joint order as modified by McDowell, not because he did not make an attack; he should not have made an attack, says the Recorder. That was an unmilitary movement; it was contrary to the recognized principles of warfare—but he violated the joint order, as modified by McDowell, because, when he got to Dawkins' Branch, he did not wheel around and march up to the right, straight to the front of the enemy at Groveton. General McDowell, at Governor's Island, protested against being defended by the Recorder. I see now, perhaps, what he meant, although I do not believe the Recorder then disclosed this view. It is a complete going back upon all of my learned friend's antecedents. Nobody heretofore has suggested this view; and as I said at the beginning of my argument, if we are to take him as the authoritative mouth-piece of this prosecution on this important part of the case, we need not consider it any further. For, he now asserts that McDowell was all wrong; that General Pope did not know anything about it; that the Judge-Advocate-General was entirely in the clouds, and that Porter's error, joint order or no joint order, and particularly under the order of General McDowell, ordering him to go to the right, was in sending Butterfield across, in pressing the enemy upon the other side of Dawkins' Branch, that he should have marched up to the right—they said that he should have attacked, and attacked more vigorously. Well, I must leave them to settle their hash between themselves; I certainly cannot solve that problem.

Now, I fall back briefly upon the consideration of the case as it stands. We must either leave McDowell out or the Recorder out; and it does seem to me that his presentation of the case disposes of itself. Now, I propose to leave him out, and consider a little further the case as made without him. Now, how is it? Here is a case presenting this remarkable situation. I did intend to read what Generals Pope and
1731 McDowell said on that subject. I think I will briefly call your attention to that, because it bears on the question of the construction of the joint order. Was it, as the Record now claims, to go right up to the battle-field of the night before, or get in behind that battle-field and reach Gainesville? General Pope, at page 14 of the General Court-Martial Record, says (I think it is refreshing, after the views that have been presented, to go back to what he and McDowell said on the former trial):

I then sent a joint order to Generals Porter and McDowell, directed to them at Ma-

nassas Junction, specifying, in detail, the movement that I wished to be made by the troops under their command—the withdrawal of King's division, of McDowell's corps, which, during the greater part of the night, I had understood to be on the Warrenton turnpik , and west of the troops under Jackson. Their withdrawal to Manassas Junction, I feared, had left open Jackson's retreat in the direction of Thoroughfare Gap, to which point the main portion of the army of Lee was then tending, to reinforce him. I did not desire to pursue Jackson beyond the town of Gainesville, as we could not have done so on account of the want of supplies—rations for the men and forage for the horses. My order to Generals Porter and McDowell is, therefore, worded that they shall pursue the route to Gainesville, until they effect a junction with the forces that are marching upon Gainesville from Centreville—the forces under Heintzelman, Sigel, and Reno; and that when that junction was formed (as I expected it would have been very near to Gainesville), the whole command should halt, it being, as I stated before, not feasible with my command in the condition it was in, on account of supplies, to pursue Jackson's forces further.

Then at page 30 General Pope further says—now, here is a pretty good answer to the Recorder:

Q. Will you state on what road you intended General Porter should march to Gainesville, in the execution of your written order, referred to in the joint order of the 29th of August?—A. I intended him to march on the direct road from Manassas Junction to Gainesville.

Q. Would that road have brought the accused and his command to the battle-field at Groveton?

Now, my learned friend insisted that you should construe the joint order so that it would have brought them on to the battle-field at Groveton. Then at page 33:

I knew the position of the enemy, who occupied a line perpendicular to the Warrenton turnpike, and at or near the town of Groveton; I was sure, from the orders I had given him, that General Porter must be somewhere between Manassas Junction and Gainesville on the road to Gainesville.

So that you see a departure from the road to Gainesville would have been a departure from General Pope's idea.

So far I knew, within certain limits, though not exactly, the relative positions of General Porter and of the enemy. My belief was that the road from Manassas Junction to Gainesville either passed by the right flank or was occupied by that flank of the enemy, and that Porter's march, if pursued, conducted him either to the right flank of the enemy or past the right flank of the enemy toward his rear.

But it is not necessary to occupy any further time in reading from the record about that, it is so clear what the understanding of Pope and McDowell was about it, that they were to move toward Gainesville and not in any other direction. This new figment of the imagination about turning off at Dawkins' Branch is to my mind a wild and delusive one. Now, how was it? If you cannot impute any violation of that joint order except as modified by McDowell, was there any modification of it? General Porter says there was, by General McDowell telling him to remain where he was. General McDowell says there was by his giving Porter an immediate order to make a vigorous attack upon the right flank of the enemy in front of him. Now, which is right? Did General McDowell give any such order as he claims to have done? He says he told him, "Put your troops in here"; but you will still recol-
1732 lect his description of it, which has been brought to your attention by Mr. Bullitt—his interpretation of those words given on the former trial—when he is brought to the point of what he meant, saying: "I meant just what is stated in the 4.30 p. m. order." Well, there is no doubt about what that was and what that order directed, because that is just what McDowell testified on the former trial that he meant to say, and did say by, "Put your troops in here." The 4.30 p. m. order says:

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and if possible on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us.

Now, did General McDowell give any such order as that? We say he did not. He swore upon the former trial that he did. The case went against General Porter on the violation of this joint order, upon the belief of the court-martial that General McDowell did give such an order. Now, did he do it? In the first place, let us see what the two generals knew on the subject of the force in front of them at that time. We have seen, up to the time of General McDowell's arriving, that General Porter was not very fully informed. He saw there was a force there, and he was proceeding to feel it and press it; he had taken a couple of scouts who said it was Longstreet's force, and that opened his eyes. What came with McDowell? McDowell brought a dispatch from Buford. What did that tell him? Why, if they were not fools, it told them everything; It told them that all of Longstreet's force was there. Because you will observe in what I have read from General Pope's testimony that he understood perfectly well that it was the main army of Lee that was pressing through Thoroughfare Gap to reinforce Jackson; no small detachment, no room for any quibbling about divisions or brigades, but it was the main army of Lee that was pressing through, and nobody knew it better than McDowell. Had he not been stationed in front of Lee on the Rappahannock when Jackson broke off from him? Do not his dispatches subsequently show that he knew well that what Lee was fearing was that he could not get through Thoroughfare Gap in time to relieve Jackson? That was obvious, without any special information. It seems to me that the youngest lieutenant in the Army might have guessed it and ought necessarily to have inferred it. Now, the Recorder says that the captured scouts may have been two of Robertson's troopers, and that Robertson's troopers were not with Longstreet; they were with Jackson. Was that quite ingenuous? Did he suppose that he could mislead the minds of this Board by such a suggestion as that? What does this dispatch of Buford's say:

HEADQUARTERS CAVALRY BRIGADE, 9.30 A. M.

Seventeen regiments, one battery, five hundred cavalry, passed through Gainesville three-quarters of an hour ago, on the Centreville road. I think this division should join our forces now engaged at once.

Please forward this.

JOHN BUFORD, *Brig. General.*

That was Buford who had been sent to keep watch of them. The Recorder has saved me the trouble of counting those troops. They were 14,100 men, he says—more than one-half of the main army of Lee that was pressing forward with all speed to relieve Jackson, as they all understood it. What had happened? Why, a quarter before nine, just about the time that General Porter received his order to reverse march at Manassas Junction, they had, what? Come through Thoroughfare Gap?

No. Reached Gainesville? No; but *passed through* Gainesville—
1733 the main army of Lee that was coming through Thoroughfare Gap, that was what had come. I do not mean the entire army that had come up from Richmond. I mean the main army; the portion that Jackson had left or broken himself off from, when he came through Thoroughfare Gap. Now, then, if they came to re-enforce Jackson post haste and had passed through Gainesville, which is nearer to Dawkins' Branch by far—a little more than half as far as the distance from Manassas Junction to Dawkins' Branch—if those two generals were not fools, didn't they know

who and what was in front of them? They were, at least, 14,100 men. I do not care whether they were at Stuart's Hill, or between there and the turnpike, or between there and this road; they were there; they commanded this position on the other side of Dawkins' Branch, which General Warren has described as a stronghold, corresponding to this stronghold on which Porter was. General McDowell disavowed knowing anything about Longstreet, and led the court-martial to believe that he did not believe they were there. But you must put yourselves in the places of Generals McDowell and Porter, when they read that dispatch of Buford on that ground, and found that those two scouts had reported Longstreet's men in front of them. What ought they to have understood? But we are not left to that. We are not left to any mere calculation, because McDowell himself says what he thought about it. At page 803 of the new record, it does seem to me this question is settled beyond all dispute. Here is the passage to which I call the attention of the board:

Q. When you testified on the former trial of General Porter, were you of the belief that the force mentioned by General Buford's dispatch was the whole rebel force in front of General Porter that afternoon?—A. Did not I answer the question a little while ago?

Q. I now call your attention to later in the afternoon.—A. I left General Porter about noon. After that time I knew nothing of what occurred in his front.

Q. You knew of no increase of rebel force in his front?—A. I knew nothing of what occurred in his front.

Q. When you testified on the court martial, it was with the belief that the rebel force in front of Porter all that afternoon was limited to the troops mentioned in Buford's dispatch?—A. I didn't say that.

Of course, we knew that he would not stultify himself by saying that, so we pressed the question.

Q. I ask you.—A. No; I don't. I say that was not a question that came up. I acted upon that thing up to twelve o'clock.

That is, on Buford's dispatch.

After I went away from there I had no further concern personally with that question. *I took it for granted that there would be other forces come up.*

Of course, they took it for granted. They were educated at West Point, were they not? They knew that here was an army of 25,000 men, more than half of which had passed through Gainesville at a quarter before nine, and the question was at twelve, where were they? Were those troops interfering with their progress? Longstreet was another name for the main army of Lee. How much was it? Fourteen thousand one hundred men certainly already there, and they took it for granted that the rest were coming. General McDowell says, "That under those circumstances he told General Porter to attack at once with his whole force." That he swore to on the former trial. Was he mistaken about it? May he have been mistaken about it? I will not reargue that question; it has been so fully argued by Mr. Bullitt. Of course,
1734 he was mistaken. Of course, this lamentable result of the first trial upon General Porter came from that testimony.

On pages 802, 803 of the Board Record, General McDowell testifies as follows:

Q. Didn't you think that when you left him, he was left to the unrestrained operations of General Pope's joint order?—A. No, sir; as modified by me. It is for the Board to decide that question.

Q. Suppose that General Porter ascertained, after you left him, that the rebel force in front of him was twice what you had supposed it to be, and spoken of to him, and twice Porter's own force, do you think then that he should have made an attack?—A. I think he should have found out the force.

Q. You say he should have tested and found out the force?—A. I think so. That is a question for this Board.

Q. Now, having tested and found out a force quite as large as his own, do you think he should have attacked them?—A. He should have made some tentative operations. There are a number of ways of attacking; you attack headlong, or you skirmish, or you shell; but to do nothing whatever, certainly would not be complying with the order—to make no effort with the troops.

Q. Now, I ask you, if, after making efforts necessary for the purpose, he had ascertained there was a force there double his own after you left him and took King away, do you say that he should have attacked?—A. He should have made an attack; yes.

Q. He should have made an attack just as you ordered it?—A. My order was, I confess to you, a very vague one. It was made to a person whose zeal and activity and energy I had every knowledge of. I did not pretend to give him any particular instructions or directions that he should skirmish, or shell, or charge, or anything of that sort. I merely indicated the direction in which his troops should be applied. Further than that I did not think, and would not think now, if I had the thing to go over again, to direct.

Q. You did not construe it as an order given by you to an inferior general?—A. Certainly I did.

Q. What did you mean, then, by giving orders that were vague and amounted to nothing?—A. I did not say that.

Q. Well, gave orders of the kind you have described?—A. What orders?

Q. What did you mean by giving orders "vague" and merely an indication?—A. I meant just what I said, that General Porter commanded a corps. I did not tell him that he should deploy so many troops, or that he should put in so many skirmishers, or so many batteries, and do this, that, or the other. Those are questions of detail which, as an army corps commander, he was to carry out. All I did was to give line to his operations.

Q. You meant that with the indication you gave him, he should act on his own discretion?—A. Yes; but he should act.

Q. Now I come back to the question I put to you before. If, after acting, he ascertained the presence of a rebel force in front of him twice as great as his own, twice as great as you on leaving him had supposed it to be, he should have brought on a general fight with them?—A. He should not have brought on so general a fight as to have thrown the whole of his force headlong upon this supposed double force of the enemy.

And on pages 814, 815, he testifies:

Q. When you left him did you expect that within an hour he would be engaged with the enemy?—A. Yes, sir.

Q. Then you do not think it would have taken him an hour?—A. You just asked me that question—if I thought that within an hour he would be engaged with the enemy; I said yes, I thought he would.

Q. Short of an hour?—A. I did not say short of an hour.

Q. Well, that is what I understood by *within* an hour.—A. I say at the end of an hour, if you want to get at the exact time.

Q. Did not you expect by the end of that time to get your force well around and connect with Reynolds?—A. I hoped to do so.

1735 Q. Then, as you left General Porter, I understand your plan was one of co-operation?—A. With him?

Q. With him and with Reynolds.—A. We were all co-operating to the same point.

Q. But you did not expect that he should become engaged with the enemy until you should get around to the left of Reynolds?—A. I did not make any such calculation; I have said nothing of the kind.

Q. You said something very near it; and I want to know whether that was your expectation—that he would be in a general engagement with the enemy before you got round on the left of Reynolds?—A. You want to make me say what he would be doing at a certain time, and where I should be; I say no such calculation entered into my mind.

Q. You said by the end of an hour you expected to be well around on the left of Reynolds with your troops?—A. No, sir; I did not say well around to the left of Reynolds.

Q. What did you say?—A. Well around.

Q. Well, around where?—A. In the direction where I was going.

Q. Around to the Sudley road, and on the left of the Sudley road, toward Reynolds?—A. I say you are putting that in.

Q. Well, the record will show what you did say. Did you intend that he should get into a general engagement with the enemy while you were removed from the scene back on the Sudley road, so as to be out of all possibility of rendering him immediate assistance?—A. I do not want that question put in that way.

Q. That is the one I want you to answer.—A. Because you are putting words in my mouth, and putting plans in my head which were not suggested there.

Q. Then you can merely say it was not the case.—A. *When I left General Porter, I left him a corps commander, for him to operate in the direction indicated. How quickly he was to get in an engagement, whether an hour or an hour and a half, and how he would do it, whether in one way or another, I did not indicate, nor did I take it into my mind; it was simply that he was to operate on the left, and necessarily, when he got over there, the nature of his operations would be determined by the condition of things that he would find. What those conditions would be I could not at that time tell.*

And on page 817 he testifies:

Q. Did you expect General Porter to engage the enemy alone, when along the rest of the line there was nothing but artillery engaged?—A. He would not be engaging the enemy alone if the rest of the line were engaged with artillery. You seem to think artillery is of no consequence.

Q. What kind of an engagement did you expect him to enter into while no other but artillery fighting was going on along the rest of the line?—A. As I have tried to make myself understood on several occasions, the nature of the particular kind of contest which he was to engage in was not a matter which I ventured to impose upon him. As a distinguished and zealous officer, with his corps under his command, I did not venture to do anything more than indicate the place where I thought he was to apply that force. Whether he was to skirmish or have a very deep line, or extended one, was a question which I did not go into at all, nor think of going into.

Q. Then a skirmish-line would have answered your expectation when you left General Porter, if, in his discretion, that was more advisable?—A. It would depend upon the nature of the skirmish—how it was done; how vigorously carried out; whether the circumstances required it, and it only. It depends upon a great many things that you must make a great many suppositions about before I can give an intelligent answer. If you want to know a general principle, I believe it is laid down by military writers that a body of men should be in a condition to offer battle or decline it; whether the main body shall be advanced or retire on the reserve, and many other positions; all of which are conditions upon which battles are determined.

Q. And determined upon the discretion of the corps commander?—A. Yes; provided he acted energetically.

Q. Provided he acted according to the best of his discretion as a soldier?—A. Yes, sir.

I have thus shown that General McDowell was utterly reckless in his testimony, on the court-martial, producing a wholly false impression on which Porter was convicted, and which he has now been com-
1736 pelled to retract and correct. On the court-martial, he swore that he left Porter with a positive order to attack at once. For not doing so, as ordered by him, General Porter was convicted and disgraced.

How far, and from what motives the error arose, it is not for me to say. There may be various explanations of it. I should think, perhaps, he might have been angry, so as to disturb his good judgment, but he denies that we have ever seen him angry. Perhaps he had the nightmare, as he says this campaign has been a nightmare to him from the time of its occurrence. I took occasion to see what effect that would have, and I find that it might disturb any man's judgment if it was operating upon him when he was testifying. A very recent scientific authority describes a nightmare as "a terrific dream, in which there appears to be a disagreeable object, as a person, an animal, or a goblin present, and often upon the breast or stomach of the sleeper, accompanied by an inability to cry out, or move or call for help." Well, something happened to destroy his judgment or his presence of mind, or his recollection upon the former trial, and he swore to that. Now, at Governor's Island he came and said that he meant no such thing as he had been understood to mean, and had sworn at the court-martial that he did mean—not that he did not use the words, "Put your troops in here," but that he didn't mean any such thing as was imputed to his language at the court-martial, but that all he meant was to do just what General Porter did do, act upon his discretion, feel the force of the enemy in front of him by a skirmish-line, if in his judgment that was the proper thing to do under the circumstances, and any other method

that he, as a corps commander, left as sole master of the situation, might deem sufficient and proper. What we claim is that General Porter, acting under that discretion, did what he did, and that it was the best thing under the military circumstances to do. If it was left to his discretion the question is whether his discretion was exercised honestly and in good faith, and not whether it was the best thing that might have been done. McDowell comes to Governor's Island and says that he did not mean what was imputed to his language before, but that he did not think there could be much doubt about it, because when he said it he indicated by a gesture what he meant by "Put your troops in here." Now, his testimony on that subject is very remarkable. One would suppose that if he said "Put your troops in here," and indicated by a gesture, he would know where the gesture indicated. Now, here is the cross-examination on that subject:

Q. You are quite positive, I understand, as to your recollection of the exact words which you used to General Porter about putting in his troops, as you stated on page 85, "You put your force in here." Is it your recollection of those being the exact words?—A. Yes, sir.

Q. Was then and is now?—A. Yes, sir.

Q. Then you did not say "Put your troops in there"?—A. Is not that what you said?

Q. No; "Put your troops in here."—A. It was accompanied by a motion of the hand, here or there.

Q. I want to know whether it was *here* or *there*.—A. That I cannot tell you.

Q. Would it make a difference whether it was *here* or *there*?—A. No; one might be a little more critically correct as an expression, but "here or there" would have been understood.

Well, it would have been a very singular order for him to say to General Porter, "Put your troops in here or there."

Q. I look for your recollection of the real words, whether you said "Put your
1737 troops in here," or "Put your troops in there."—A. I could not tell you as to that.

Q. You say that here or there would make no difference?—A. No; in connection with the movement of the hand, as indicating the place.

Q. Do you recollect the movement of your hand?—A. I cannot tell you whether it was the right hand or the left.

Q. Can you recollect which way you were facing?—A. No, sir.

Q. Can you recollect whether you moved your hand north, or south, or east, or west?—A. It was not in reference to the direction of the compass.

Q. No; can you recollect that fact?—A. I could not.

I do not think the order is helped out much by the gesture, and when you come to see that there was no order, but only a gesture, added to this wild and unintelligible "here" or "there," east, west, north, or south, it left General Porter in the position which I now will indicate.

General Porter swore before the McDowell court of inquiry, which I am much obliged to the Recorder for putting in evidence, that when McDowell left him he said no such thing as "Put your troops in here"; but that when Porter said, in view of this idea of taking King away, "What shall I do?" he, McDowell, said nothing, but waved his hand, and rode off as fast as he could. Is there any corroborating testimony to that? Yes, Captain Montieth, aide-de-camp to General Porter, was present and heard the question and saw the wave of the hand, and saw the departure without an answer. Now, what? Why, General Porter was left there alone, down near the place where the horses were drinking, and he came back alone to his command. As he came back, he saw, as he swears before the McDowell court of inquiry, the enemy gathering in his front. He knew well enough what that meant, did he not? That those troops reported by Buford were there, and, as he thought then, coming down upon him. What was the natural movement? What was the natural suggestion? He had thought before McDowell arrived, and when he was in command of 17,000 men, 9,000 of

his men and 8,000 of King's, which had been placed under his special command—he had thought the wise course was to press the enemy in front, and if possible, go over to attack him; but McDowell having now left him, without any answer even to his suggestion that now was a time when he might make a communication by taking King's division around on the Sudley Springs road (these things shifted with every changing view from the enemy, did they not?) And, as he rode back, he saw the enemy gathering in his front, and he says, "Now, if ever, is the time to attack. Don't we know that the force reported by Buford is here—don't we take it for granted, as McDowell says, that all the rest are coming? Now or never is the time to attack!" What does he do? Why, he renews and continues his movement to press the enemy, and in that view pushes Morell over to the right beyond the railroad; he is preparing a new or a forward movement beyond Dawkins' Branch. Well, on what view was that possible? On what theory had it always been possible and practicable in his idea? Why, it was not with 9,000 men against from 14,000 to 25,000 over there, wherever they were. I don't care whether they were within a few rods of Dawkins' Branch, or anywhere that the Recorder pleases to put them. No; it was not with any such idea. It was, that with 17,000 men he might try it; and that was the only time, as it seems to me, that military men will say that an attack should have been tried. So, on the impulse of the soldier, knowing that there is a supporting force within reach of him, namely, King's division, he sends to King to hold on. What was that for? That he might press with Morell; that he might bring Sykes out here (in support), and make the movement described by Warren as the necessary movement and the only practicable one, with King's force to be held in reserve while Morell deployed, and to come up as he and Sykes advanced. Now, the learned Recorder sees fit to dispute that that took place. I never have seen how it can be disputed. I never could see how, at least, General Porter could help believing that it was so ordered by General McDowell, and acting on that belief. He sends General Locke after King's force. The answer comes back from McDowell in place of King—

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> Give my compliments to General Porter, and tell him to stay where he is; I am going to the right, and I will take King's division around with me.

Now, if that was the time to attack, who is responsible for its not having been done? Porter, who wanted to do it; Porter, who began to do it, or McDowell, who refused to join or support him?

And now I wish to call attention to the Recorder's imputations upon our evidence that what I have thus stated did really happen. McDowell said he didn't recollect it. That is all he said. General King said he didn't recollect it. Well, if it turns out that General King was not there, and that it was some other officer, there is pretty good reason for King not recollecting it, apart from the terrible illness under which he was suffering, which might naturally affect his memory, an illness which it is proven upon the record did overcome him, and from which he had been suffering and in a disabled condition for the whole of two weeks before. Well, but, says the Recorder, Porter knew that King had gone away, and, when Porter says that he sent Locke to King, he tells a falsehood. Now it would be something if Porter knew that King had gone. The Recorder has made the deliberate statement, with the intent that you should believe it, that this record shows, by the evidence of Patrick and Judson, that Porter knew that King had gone. I deny it. I say it does not show any such thing. At page 104 is the testimony of Judson, upon which he relies, which is this:

Question. What time did you reach that position (Bethlehem Church)?—Answer. I cannot state the hour; it was early in the morning of the 29th, I think.

Q. Then your division knew the way very well from Bethlehem Church to where the fighting was the night before?—A. Yes, sir.

Q. In the morning, were you still posted on that road when General Porter's division came along marching towards Gainesville?—A. We were.

Q. Did they come by you; the head of the column on the road?—A. My recollection is such.

Q. Was General Porter with them?—A. He was.

Q. Did you see him?—A. I saw him.

Q. Did you have any conversation with him?—A. I did.

Q. State that.—A. General Porter asked me where the commanding officer of these troops was.

Now this was a man in Hatch's brigade.

A. I conducted him to General Hatch.

Q. Had General McDowell at that time made his appearance?—A. I have no recollection of seeing General McDowell since the day before until that time.

Is that an indication even to Porter that probably King was not there? Not in the least; there is not a word of suggestion about King. Judson may have taken him to Hatch as the immediate com-
1739 mander of the brigade, which he was, or King may have been been temporarily away. There being no reference to King, how unfair is it to impute to Judson's testimony knowledge on Porter's part that King had gone. It does not help the matter any more to refer to General Patrick, at page 187, because it shows that, when Patrick says that King came up to say good-bye, Porter's column had already gone past.

I think General King was the first whom I saw. It was somewhere about eight or nine o'clock, while my commissariat and personal staff were hunting up supplies, &c. General King rode over to my headquarters, and told me that he was not fit to be in command, that he was going to Centreville, and came over to bid me good-bye. I think Colonel Chandler, his adjutant-general, and I do not recollect who else, were with him at the time; he came to say good-bye, and I do not know that I saw him after that.

Q. In the mean time had you found the promised supplies?—A. We got some somewhere.

Q. You found after a while the rest of the brigades of your division?—A. No; I have no personal recollection of seeing them there at all. I must, I think, have seen them, or knew of their being thereabouts from some source.

Q. What happened next after King's departure for Centreville?—A. I was ordered, I think, by McDowell in person, to move as soon as I could in the rear of General Porter; Porter having just passed through, or passing through near Manassas Junction, to go back to the scene of our fight the night previous.

Clearly, when General King came there to bid General Patrick good-bye, Porter had already gone to the front. How puerile is it then to say that Porter must have known that King had gone, and therefore he could not have sent this message by Locke to King, when it appears that he was all day (and the government produces the dispatches) sending dispatches, not to McDowell and Hatch, but to McDowell and King. O, says the Recorder, those dispatches were properly described by a little word of three letters, seldom used among gentlemen, and never among soldiers. Well, will that go down with the common sense which we claim for leading military minds? Of course not. This message was sent by Locke to McDowell, and this was the answer; and, mind you, it corresponds in substance with what McDowell said at Governor's Island, that he meant by "put your troops in here," "I meant to indicate the point at which he should operate." For there is not much difference between that and "Give my compliments to General Porter, and tell him to stay where he is."

Was there a disobedience of the joint order? Nobody claims that

there was, except as modified by McDowell; and it was not modified by McDowell, except to thwart what General Porter thought ought to be done with the 17,000 men, and to leave him there with his force of 9,000 or 10,000 men—a force utterly insignificant, as compared with what they both knew was over on the other side. I will not enter into a dispute with the Recorder as to where each division of the enemy's troops was. They were there, as everybody knew. Longstreet, Wilcox, Marshall, and Williams have told you where they were. Corporal Solomon Thomas and his reverend associates, and the medical assistant surgeons of this, that, and the other regiment, may come and tell you to the contrary, but there is the evidence. It hardly needed more than Buford's dispatch to demonstrate it.

Well, both the Recorder and the Judge-Advocate-General say that there was a retreat, and that that was a violation of the joint order. It is pretty late in the history of this discussion, as it appears to me, for us to be arguing the question upon the evidence as to whether there was a retreat that day. I think we will be stultifying ourselves to discuss that matter any more, unless we accept the learned Recorder's military view. If you do, then there was a retreat. He says that
1740 when General Morell's force, in obedience to the order of McDowell, was withdrawn from beyond the railroad and brought back to the road and placed under cover to "come the same game" upon the enemy, as they were evidently coming upon him, and so Sykes' brigade was withdrawn 100 or 200 or 300 yards to make room for them, he says that was a retreat. Well, it seems to me that there was a pretty emphatic expression upon the countenances of the several members of the board about that when the evidence was coming in. It seemed to be a pretty plain indication that some of us did not know what the word "retreat" meant. We do not pretend to dilate now upon that question. There it stands upon the record. All the witnesses, as it seems to me, substantially agree that there was not any retreat; that there was nothing in the nature of a retreat; there were movements back and forth. If a brigade is moved up 100 or 200 yards we do not call that an advance upon the enemy; and if they withdraw to give place for the movements of other brigades, we do not call that a retreat. Well, that is all there was that day affecting in the least the situation.

It is true that, under the circumstances which I shall presently describe, there is claimed to have been an order to General Sturgis—or so stated by him, and forgotten from the outset by General Porter—there was a direction to General Sturgis, who was in the rear of Sykes, to go back to Manassas Junction; and then there was apparently an almost immediate recall, and they came back before they had got anywhere near Manassas Junction; and it is not far from the junction of the Sudley Springs and the Manassas and Gainesville road to Manassas Junction. Ah, but, says the Recorder, there was an *intention* to retreat; and in a case of petit larceny, he says, the taking of a watch or other chattel and having it in your hand, even for a moment, makes out the crime. Well, is this a petit larceny court? We think that sometimes he has had that idea. We supposed it was a great military tribunal, examining into a question according to the recognized maxims of warfare, not to judge that there was a retreat unless there was a retreat, and when there was no retreat, finding that there was none; but if this Board is going to be degraded into a police justice's court, I for one beg leave to retire. I should retire beyond Manassas Junction. It seems to me that we should be imposing upon the good nature of the Board if we took up the details and answered the criticisms of the learned Recorder

about the movements in the nature of a retreat. He said a good many other ingenious things; it seems to me that a good many nights must have been employed in digging them out—keen and crispy criticisms upon the evidence. But how any of them fairly weigh upon the mind of the Board as indicating a retreat it is impossible for me to guess. It would be a waste of time to discuss that question. They all admit of the obvious answer that a great deal of the testimony upon which they were founded was from utterly incompetent men. Dr. Faxon; who is he? Dr. Faxon was assistant surgeon of a Massachusetts regiment. His office required him to attend to his pills and powders, his lancets and his cutting knives; he did not notice anything in particular, but he thought there was a retreat. But Morell, and Butterfield, and Sykes, and Warren, and Griffin, all skilled leaders, didn't see it. Well, it is the medical view of the situation.

We do not believe it will be a valuable use of the few remaining hours of this day to discuss that question of a retreat, and so we leave the subject of the joint order. All pretenses of disobedience of that order have long since been exploded. If it was violated, it was not violated by Porter. If it was varied from, he could not vary from it, 1741 because the responsibility was on other shoulders. He wanted to do, with a force which possibly might have been adequate, what here and there in this case it has been claimed he ought to have done, but he was thwarted by the peremptory refusal of his superior officer. In that same connection we call the attention of the Board to a most remarkable document, and one that has excited no little curiosity, one that was sent here by the Secretary of War, or under his authoritative sanction. We have tried to get the Recorder to admit its paternity, but he does not see fit to do so, and we have had to look at the internal evidences, which are sometimes quite conclusive. The external evidences are considerable, because on the back of it is this endorsement, which does not say who wrote it or where it came from, but which indicates, it seems to me, its source:

WASHINGTON, *June 15th*, 1878.

Respectfully referred to Maj. A. B. Gardner, Judge-Advocate, U. S. A., Recorder o Board, appointed by S. O. 78, of April 12, 1878. from this office.

It is understood that *General Pope* wishes Maj. T. C. H. Smith, paymaster U. S. A., to attend the trial, and the Secretary of War thinks it would be well to subpœna him, as he is quite familiar with the facts.

By order of the Secretary of War.

E. D. TOWNSEND, *Adjutant-General.*

The RECORDER. Do I understand that that is in evidence?

Mr. CHOATE. No; I am using it as part of my argument.

The RECORDER. Then I shall bring it to the notice of the Board that the gentleman is arguing upon what is not in evidence.

Mr. CHOATE. None of my argument is in evidence.

Mr. MALTBY. That was admitted and shown to the Board during this session, though the name of the author was not required.

The PRESIDENT OF THE BOARD. Not admitted as evidence, but as a suggestion of a line of argument.

The RECORDER. Is it put upon the record to be printed as the rest?

The PRESIDENT OF THE BOARD. Not at all; it is received as a line of argument.

Mr. CHOATE. I will ask leave to incorporate it in my argument. There is some little indication of its authorship. It is sometimes said that the style is indicative. I think the style is very indicative, and if you can attribute a part of it to anybody, perhaps you can impute the

rest of it to the same author. Now, I find in a letter of General John Pope to the Compte de Paris, written from Fort Leavenworth, Kansas, December 21, 1876, this sentence:

The greater the force of the enemy in our front, the greater need there was of the help of Porter's corps, and the greater his obligation to render it, and *if you could prove that the whole Southern Confederacy was in front of him on that day, you would only succeed in blackening his crime—the crime of deserting the field of battle and abandoning his comrades* to the unequal odds he left behind him.

Now, in the document thus indorsed by the Secretary of War I find this:

The greater the force of the enemy in front of Porter, the greater the necessity of his aid, and if the whole Southern Confederacy had been before him, it only made his desertion of the rest of the Army the more shameful.

I should not suppose that better external and internal evidence could be furnished or required than this of the authorship of this remarkable document, which has been sent here under the imprimatur of the Secretary of War for you to consider, and I trust you will consider it. I care not whether it originated with General Pope, whose language it evidently bears, or with Colonel Smith, whose name is upon the
1742 back of it, or from some unknown source, which appears to be pressing this prosecution from behind. It is the last authoritative statement, prior to the Recorder's, of the argument, and in that point of view I want to read it. If it differs from what was claimed on the former trial; if it differs from what General Pope then claimed; if it differs from what General McDowell then claimed; if it differs from what he claimed at Governor's Island; if it differs from what the learned Recorder now claims, I give the government the benefit of the doubt. They may choose between their various theories when they get through.

Now, I will read this. The theory of it is this, that Porter was at fault for not attacking when General McDowell was going around on the Sudley road. Was ever anything so preposterous as that heard before, in view of the claims that have now been made, and all the evidence that has been laid before you? After McDowell's refusal to let King stop a moment that he might make an advance, they say Porter was at fault in not making an attack any time while McDowell, with King's division and Ricketts' division, was going around where they went. Now, there is a remarkable circumstance connected with this theory, the cardinal idea of which is that King and Ricketts were within supporting distance, although they were being led by their commander away from the scene of action, in which he refused to let them participate, and away from this theory; that is to say, around upon the Sudley road, where we always supposed King and Ricketts both went up. But some clergyman or sutler, or possibly Corporal Solomon Thomas, having said that he saw Ricketts' division around on what is called the new road, the gentleman who got up this fancy map, as we will call it, which harmonizes with the Recorder's view, put Ricketts away around—not on this road to Sudley, but away around here [on the "New road" from Manassas Station to the Sudley Springs road], several miles further off. Now, in the light of that consideration, we will observe what this paper says about their being in supporting distance as a reason why Porter should have made an attack between 12 and 2 o'clock:

At 12 o'clock m. on the 29th of August, 1862, a severe battle was going on, and so continued until dark, between the right wing of the Union Army and the Confederate forces under General T. J. Jackson, at Groveton, on the turnpike leading from Centreville to Warrenton, Va.

The line of battle was perpendicular to the turnpike, the left of our force and the right of the enemy's being just south of that road.

If this came from General Pope, it is an emphatic denial of the Recorder's theories about a contrary position of his own troops.

At twelve o'clock noon—

That is the objective point of time—

when the battle of the right wing was at the hottest—

Just think of that, in view of the clear proof to the contrary—

these two corps, Porter's leading, had reached a point west of the Bethlehem Church. At that church the road to Sudley Springs branched to the right (north) and passed directly through the lines of battle.

The orders of these two corps, which directed their march from Manassas Junction upon Gainesville, are given in the testimony before the Porter court-martial, and required their march to be continued towards Gainesville until they connected by their right with the right wing of the army. When they reached Bethlehem Church, about half-way between Manassas Junction and Gainesville, they were in full hearing of the battle going on on the right, and found their advance in the presence of a force of the enemy.

The writer of this paper thought the enemy was there.

McDowell, finding the whole road in front of him toward Gainesville blocked up by Porter's corps, which was stretched out in column, and knowing how necessary
1743 it was for him as well as Porter to go immediately into action, told Porter to attack at once where he was, and that he (McDowell) would take the Sudley Springs road, on which the rear of Porter's column rested, and join the battle on the right.

See how this differs from McDowell at Governor's Island and from the Recorder here:

That McDowell would have attacked, as he told Porter to do, had he been in front, there is not the faintest shadow of a doubt.

McDowell declares that he thought that he then had so far advanced that they were close up to the pike, and that there was not room for any considerable force of the enemy between them and the pike. And it is clear from an examination of his whole testimony and his false position admitted in it, that he thought they were very near the pike at twelve o'clock.

At that time and for two hours afterwards McDowell's corps was still with Porter.

What an outrageous proposition that is. Porter sends back for King's division. McDowell says "You cannot have it," and takes it away with him, and this paper says that at that time, and for two hours afterwards, all the while they were getting up to the Henry house, McDowell was still with Porter.

Or so near that its rear, as it marched to the right up the Sudley Springs road from Bethlehem Church, must have been still in view, so that Porter's attack could and would, if necessary, have been supported by McDowell. At the time Porter's attack, by every rule of warfare, and of military obligation, should have been made, and for hours afterwards there were present on the ground, not much (if any) less than twenty thousand Union troops, viz, the corps of McDowell and Porter, less Ricketts' division, but plus Piatt's brigade of Sturgis' division which was with Porter's corps, in addition to his own two divisions.

The substance of it all is that Porter was at fault for not attacking while McDowell was going off to make connection on the right, after having positively refused to let him have a man. That is about a fair specimen of the ground upon which this prosecution has been pressed.

The Board then, at one o'clock, took a recess of one hour.

Mr. CHOATE resumed his argument as follows:

PORTER'S TESTIMONY BEFORE THE M'DOWELL COURT OF INQUIRY IN JANUARY, 1863.

I desire now to call attention to what I regard as a most authentic and true statement of the situation then and there; I mean the sworn statement of General Porter before the McDowell court of inquiry. Much criticism has been passed on that.

I desire to incorporate it as a part of my argument, because it will stand any criticism that can be brought to bear upon it. The facts were then fresh in the mind of General Porter.

It is true that the examination was under the most constrained circumstances. It is not true, and the Recorder has been misinformed, when he said that General Porter volunteered his evidence there. He was brought compulsorily before the court. It is one of those little errors which seem to me of very little consequence, but which give a coloring to the argument for which they are presented, like the statement that General Hunter was invited to sit upon the court-martial by General Porter, and was one of his intimate friends, both of which are denied by him. But the circumstances under which Porter was examined were these: It was after all the evidence in his case had been closed; it was after McDowell had given destructive testimony
1744 against him before that court, which he then knew, and we now know, was not true. It was pending the time between the closing of the evidence and the publication of the sentence. He was not permitted to testify fully and freely; he was restricted to certain questions which bore upon the question of this joint order, and of the relations of Porter and McDowell. Fortunately you will find the matter stated, with perfect consistency, not only with its various parts, but, as we claim, with all the subsequent statements that General Porter has ever made. The ground of criticism as to inconsistency in itself is this: He speaks of various movements and intentions as to his operations at Dawkins' Branch, after General McDowell left him, and of the effect of what General McDowell said to him, but the court will see, when they come to examine it, that he had always in his mind the effect of these three things, the recognized presence of the enemy in front, General McDowell's injunction to remain where he was, and the fact of General McDowell taking King with his 9,000 men away from the combination—away from any possible operation under the joint order. It is said also, that the statements in this deposition are falsified and contradicted by the dispatches which are now produced in this, that General Porter said it would be "a fatal military blunder" to move over to the front, or to the right and front, as it was insisted that General McDowell had directed him to do. It is said that by these dispatches it appears that he did afterwards direct movements over to the front or to the right and front. That certainly is not so. The only movement to the right and front was that which was put an end to by General McDowell. The only movement to the right was that made through Morell's deployment over beyond the railroad, exactly to the right, after General McDowell had personally quitted General Porter, and before the message had been received through Locke for him to remain where he was, and that he should take King with him. Now, I will read a few passages of General Porter's testimony before the McDowell court of inquiry, because, in view of the argument I presented this morning, it seems to me that it will come in as a complete corroboration.

Q. (By COURT.) What order did General McDowell give, or what authority did he exercise over you, and in virtue of whose order? State fully and particularly.

A. General McDowell exercised authority over me in obedience to an order of General Pope's, addressed jointly to General McDowell and me, and which I presume is in possession of the court. I have no copy of it. Our commands being united, he necessarily came into the command under the Articles of War.

The witness here stated in substance to the court that the question leads to many things pertaining to the recent court in his case, the decision of which has not yet been announced.

The question requires a statement of what transpired, and he felt, at this time, some delicacy in answering, both so far as General McDowell and himself are concerned. I would have to state the orders under which I was moving in that direction.

The court decided that the question was a proper one.

The witness continued:

That joint order refers to a previous order given to me, of which this is a copy.

The witness produced a copy of an order from Major-General Pope, dated Headquarters Army of Virginia, Centreville, August 29, 1862, which was read by the Recorder, and is appended to the proceedings of the day and marked A.

The witness continued:

Under that order, King's division constituted a part of my command. I was moving towards Gainesville when I received the joint order, and was joined by General McDowell, who had also received a copy of the joint order. *I had at that time received notice of the enemy being in front and had captured two prisoners. My command was then forming in line preparatory to moving and advancing towards Gainesville.* General McDowell, on arriving, showed me the joint order, a copy of which I acknowledged having in my possession. An expression of opinion then given by him to the effect that that was no place to fight a battle, and that I was too far out, which, taken in connection with the conversation, I considered an order, *and stopped further progress*
1745 *towards Gainesville for a short time.* General McDowell and I went to the right, which was rather to the north, with the view of seeing the character of the country, *and with the idea of connecting, as that joint order required, with the troops on my right.* But very few words passed between us, and I suggested, from the character of the country, that he should take King's division with him, *and form connection on the right of the timber which was then on the left of Reynolds, or presumed to be Reynolds.* He left me suddenly, not replying to a call from me to the effect, "What should I do?" and with no understanding on my part how I should be governed, I immediately returned to my command. *On the way back, seeing the enemy gathering on my front, I sent an officer (Lieutenant-Colonel Locke, my chief of staff) to King's division, directing it to remain where it was for the present, and commenced moving my command towards Gainesville, and one division to the right or north of the road. I received an answer from General McDowell to remain where I was; he was going to the right and would take King with him.* He did go, taking King's division, *as I presumed, to take position on the left of Reynolds.* I remained where I was. When General McDowell left me, I did not know where he had gone. No troops were in sight, *and I knew of the position of Reynolds and Sigel, who were on our right, merely by the sound of Sigel's cannon and from information that day, that Reynolds was in the vicinity of Groveton.* The head of my corps was on the first stream after leaving Manassas Junction on the road to Gainesville, one division in the line of battle, or the most of it.

Q. (By COURT.) Did you consider the expression of General McDowell, as stated by you, that you were too far to the front, and that this was no place to fight a battle, in the light of an order not to advance, but to resume your original position?—A. *I did, when King's division was taken from me,* and as countermanding the first order of General Pope, under the authority given him by that joint order.

Q. (By COURT.) Was such an order a proper one under the circumstances? If not, state why.—A. I did not think so, and for that reason *when General McDowell left me, I continued my movement* as if I had not seen the joint order. My previous order required me to go to Gainesville, and from information received by the bearer of the first order, General Gibbon, I knew it was to prevent the junction of the advancing enemy and Jackson's force, then near Groveton, and that the object was to strike the turnpike to Gainesville before the advancing column should arrive. The sooner we arrived there the more effective would be our action. That order directed me to move quickly or we would lose much. That order had been seen by General McDowell, and when he altered it, as I conceived he had the authority, I presumed he knew more fully than I did the plans of General Pope. I will add that the joint order contemplated forming a line connecting with the troops on the right, and as I presumed, as General McDowell acted, taking King's division with him, that he intended to form such a line. *I thought at the time that the attack should have been made at once upon the troops as they were coming to us and as soon as possible.*

Q. (By COURT.) State, so far as you know, what followed, so far as the movements of General McDowell's troops and your own were concerned, and what orders you sub-

sequently received from General McDowell.—A. General McDowell took King off to the right. I know nothing further of his movements. I remained where I was until three o'clock next morning. A portion of the command left at daybreak. I received no orders whatever from General McDowell.

Q. (By COURT.) *But for this order, what movement would you have made, and have you reason to suppose that if you had not been stopped the junction of Longstreet and Jackson would have been effected?*—A. *I should have continued moving towards Gainesville, and until we got out to the turnpike, or met the enemy; I presume we would have prevented the junction or been whipped.*

* * * * * * *

Q. (By General MCDOWELL.) Under what relations, as to command, did you and General McDowell move from Manassas and continue, prior to the receipt of General Pope's joint order?—A. I did not know that General McDowell was going from Manassas, and I have no recollection of any relations whatever, nor of any understanding.

Q. (By General MCDOWELL.) Was there nothing said about General McDowell being the senior, and of his commanding the whole by virtue of his rank?—A. Nothing that I know of.

Q. (By General MCDOWELL.) What time did you take up your line of march from Manassas Junction for Gainesville?—A. The hour the head of the column left, I presume, was about ten o'clock; it may have been earlier. Ammunition had been distributed to the men, or was directed to be distributed, and the command to be put in motion immediately.

Q. (By General MCDOWELL.) *When you received the joint order, where were you personally, and where was your command?*—A. *I was at the head of my column, and a portion*
1746 *of the command, or the head of the column, was then forming line in front; one regiment, as skirmishers, was in advance, and also a small party of cavalry which I had as escort.* The remainder of the corps was on the road. The head of my column was in the Manassas road to Gainesville, at the first stream, as previously described by me.

Q. (By General MCDOWELL.) The witness says he received an order from General McDowell, or what he considered an order, when General McDowell first joined him, which order he did not obey. Will witness state why he disobeyed what he considered an order?—A. The order I have said I considered an order in connection with his conversation, and his taking King's division from me. I therefore did obey it.

Q. (By General MCDOWELL.) What did you understand to be the effect of General McDowell's conversation; was it that you were to go no further in the direction of Gainesville than you then were?—A. The conversation was in connection with moving over to the right, which necessarily would prevent an advance.

That is in connection with McDowell's taking King over to connect on the right.

It will be observed from what follows that General Porter had not the least impression of any direction from McDowell after he left him with King, to go to the front, or right and front.

Q. (By General MCDOWELL.) You state you did not think General McDowell's order (if it was one) a proper one, and that for that reason you continued your movement as if you had not seen the joint order. Is the witness to be understood that this was in obedience of what he has stated to be General McDowell's order?—A. I did not consider *that* an order at that time, and have tried to convey that impression, but it was an expression of opinion which I might have construed as an order; *but when General McDowell left me, he gave no reply to my question, and seeing the enemy in my front I considered myself free to act according to my own judgment until I received notice of the withdrawal of King.*

Q. (By General MCDOWELL.) What was the effect on your movements of the message you state was brought to you by Colonel Locke (your chief of staff), from General McDowell, that you were to stay where you were, that he was going to the right, and would take King with him?—A. The effect was to post my command, or a portion of the command, in line where the head of the column then was, prepared to resist the advance of an enemy in that direction, and turn a portion of the command a little back on the road. After doing this, I sent messengers to General Pope, informing him of the fact.

Q. (By General MCDOWELL.) Informing General Pope of what fact?—A. Of my present position and what there was in my front. I will say that I sent several messengers, conveying, to the best of my recollection, the general information of my location, and one *telling him that King's division had been taken to the right.* Some of those messengers never returned to me, and I presume were captured.

Q. (By General MCDOWELL.) Did you receive any further message from General McDowell, other than the one you state that Colonel Locke brought you, as before stated, which you considered an order?—A. None that I recollect of. I had memoran-

da which I sent to General Morell, and which conveys the general impression that I had received messages from General McDowell, but I have no recollection of receiving them, nor were they brought to mind till their appearance before the court. That memoranda says General McDowell informs me all is going well on the right, or something to that effect.

Q. (By General McDOWELL.) Is witness to be understood he did not on the 29th, after seeing General McDowell the second time, receive any instructions or directions or orders from General McDowell to move his troops from where he states he was directed to remain?—A. I have no recollection, and I am confident I received no message or order from him other than those that I have mentioned.

The witness speaks of the effect of General McDowell's message as brought by General Locke, to cause him to remain in position.

Q. (By General McDOWELL.) How far was it from the head of witness' column to Gainesville?—A. I do not know; I had never been over that portion of the country, and have not been since.

Q. (By General McDOWELL.) How long had the witness' head of column been halted when General McDowell joined him?—A. I cannot say, but not long. It had halted before I arrived there.

Q. (By General McDOWELL.) Witness speaks of the effect of General Mc-
1747 Dowell's message (as brought by Colonel Locke) to have been to cause him to remain in position at the place where General McDowell first saw him. How long did witness' troops continue in this position?—A. A portion of the command remained there until daybreak the following morning, and some till after daybreak. The most of Morell's division was on or near that ground all day.

Q. (By General McDOWELL.) Did witness conceive himself prohibited from making, or attempting to make, any movement to the front, or to the right, or to the front and right?—A. By that direction or order taken in connection with the joint order, I considered myself checked in advancing, *especially taken in connection with the removal of King's division. I did not consider that I could move to the right, and I consider that General McDowell took King's division to form a connection on the right, or to go to the right and form such a connection, as was possible. I add further, that I considered it impracticable to go to the right.*

Q. (By General McDOWELL.) Did witness *attempt* to make any movement in either of the directions above named?—A. Not directly to the right. I did to the right and front, and when I received the last message from General McDowell to remain where I was, I recalled it.

Showing that the attempt referred to is the one stated in the subsequent message from himself to McDowell, that he had made an attempt to get Morell over to the right, and before the message came by Colonel Locke to remain where he was.

Then the Recorder has insisted that the orders to Morell "to push over to the aid of Sigel" were in express contradiction of this statement that he made no attempt either to the right or the right and front. But the direction to Sigel was not to the right or right and front. McDowell and Porter together had found it impracticable to enter the woods to the right. What was the direction to move to the aid of Sigel? Why, it was to move over and strike upon the road by which King was marching; that was the movement; not into and through the woods to the right, beyond where McDowell and Porter had gone together, but farther back in the direction to strike the Sudley road, which was the road by which King was moving.

Q. (By General McDOWELL.) Did you make no attempt to go to the front or the right, or the right and front, after that message?—A. I made no attempt with any body of troops. I sent messengers through there to go to General Pope, and to get information from the troops on the right.

Q. (By General McDOWELL.) After General McDowell left the witness, did the witness not know he was expected by General McDowell to move to the right or to the right and front?—A. I did not.

My learned friend says that these subsequent messages to go to the aid of Sigel show that he did not know that McDowell did expect it. There is not the least warrant for that on a fair reading of this testimony. This point, and the bearing and connection of the dispatches

to what took place that afternoon, are so fully explained by Mr. Bullitt that I pass on. Let us read it, however, once more:

Q. (By General McDowell.) Witness speaks of having reported to General Pope. When did witness conceive himself as no longer under General McDowell?—A. My messages were addressed to General McDowell, I think, all of them. The messengers were directed to deliver them to General Pope, if they saw or met him. I considered myself as limited in my operations under McDowell's orders, until I should receive directions from General Pope.

Q. (By General McDowell.) How long was witness and General McDowell together before they moved to the right "with a view of seeing the character of the country"?—A. I do not think we were together more than four or five minutes, though I have no distinct recollection.

Q. (By General McDowell.) How long were they together after moving to the right?—Answer. It may have been ten or twelve minutes, perhaps longer.

1748 Q. (By General McDowell.) You have stated "when General McDowell left me, I did not know where he had gone." Have you not stated before the recent court-martial, in your defense as follows: "We" (General McDowell and yourself) "soon parted, General McDowell to proceed towards the Sudley Springs road, I to return to the position at which he first spoke to me, after our meeting"?—A. I know now where General McDowell went. I did not know then.

Q. (By General McDowell.) After General McDowell left you, you say you sent an officer to King's division, directing it to remain where it was, for the present. What was the necessity for this order? Had the division, so far as you then knew, been ordered elsewhere?—A. *I sent the message to that division to remain where it was for the present, in order not to bring it to the front, where I was forming a line, before I was ready for it, and intending to use it as the main support.*

Q. (By General McDowell.) Why did you continue to regard King's division as attached to your command after the receipt of the joint order?—A. I never thought of the point before, but General McDowell had left me, and, as I understood, in no wise changing the relations of King's division to my corps.

Q. (By General McDowell.) Did not the joint order itself modify the first order you received from General Pope?—A. It placed all under the direction of General McDowell.

Q. (By General McDowell.) If it placed *all* under General McDowell, how did you regard the fact of its being addressed jointly to you and him, and not to him only, if he was the *sole* commander?—A. I had reason to believe that order was written on an application made by me to General Pope for orders to be given to me in writing; this, in consequence of having received verbal orders from him by persons whom I knew nothing of, and which were contrary to some instructions which I had received in writing. I presume the order was written by General Pope, because I had a portion of General McDowell's command with me, and the order was intended for both.

Q. (By General McDowell.) Did witness send any written order to King's division?—A. No, sir.

Q. (By General McDowell.) How long was it after you left General McDowell before you sent Colonel Locke to King's division?—A. I sent him as soon as I returned to my command after leaving General McDowell. I returned immediately.

I do not know, nor do I care, whether there was any different statement by General Porter as to the legal effect of the joint order. I have not been able to find it. But if there was, it had no relevancy whatever to this case. The pretended contradictions and inconsistencies imputed by the Recorder do not exist; and I submit that that piece of testimony from which I have now read these extracts is one of the strongest pieces of testimony in this case that has been presented by the government, and that it is fatal entirely to the prosecution in this respect.

THE 4.30 P. M. ORDER.

Now, a few words as to the pretense of a disobedience, on the part of General Porter, to the 4.30 p. m. order of the 29th. So much has been said already on that subject that I am only called upon to answer what the Recorder has said about it.

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping

your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commanding.

Major-General PORTER.

The Recorder's first and main proposition is, that there is no new evi-
dence before this Board, and that the case is not changed from
1749 the attitude which it held on the former trial. It does seem to
me that such a statement ignores all the real evidence in this case. But I suppose it is necessary, in attempting to make an argument against General Porter, at this stage of the case and on this subject, to ignore and forget all material evidence. No new evidence! What do you say to the evidence of General Ruggles, one of the most important pieces of testimony introduced into this case, in respect to the 4.30 p. m. order?

General Ruggles was the man who wrote that order. It was very material to know whether the "4.30" which is on it could be taken as a certain indication of its actual date. Why was that so? Because Captain Pope had undertaken to say that he knew that he started with the order at 4.30, because that was the date of the order; but he had no other means of knowledge, and no other foundation for his recollection.

Now, then, if General Ruggles had written the order, and had dated it upon delivery of Captain Pope, there would have been some sense and substance to Captain Pope's testimony, some foundation as to the beginning of the half hour to two hours which, from his various statements, it must be regarded that he has said it took him to go with it. But Ruggles says his habit was, and he knows it was followed in this instance, when he and General Pope began the work of preparing the order, he acting as scribe and General Pope as dictator, to date the order first, and whether, after writing the "4.30 p. m," there were interruptions, or whether the whole order was written consecutively and immediately afterwards, or whether he and the general went about other business in the mean time, he has no means of stating. Neither he nor any one else has any means of stating. So that the very foundation of Captain Pope's evidence entirely falls out of the case, viz, immediate connection between 4.30 as the time of the beginning of the order, and 4.30 as the time of its delivery to Captain Pope. Now, when the Recorder says that there is not any new evidence in the case, he must have forgotten that.

Then, is there no other new evidence in the case? What does he say to the testimony of Captain Randol, of the regular service, who came from Boston Harbor, where he is now stationed? The Board cannot have forgotten his clear and strong statement. If my recollection does not fail me, he saw the delivery of that order to General Porter. He saw the officer come up and deliver it; and adds his testimony to that of five or six witnesses, who were produced on the trial before the court-martial, that it was sundown—6.30, not 5 o'clock, or 5.30. Had the Recorder forgotten that when he said "there is no new evidence"? Should he say that there is no new evidence, in face of the fact of the complete demolition of all the government evidence on the former trial? Is the testimony of Captain Moale and of Lieutenant Jones no new evidence? It is true they were not present on the scene of action there, and they did not witness the delivery or the receipt of that order; but

they had a far more fatal piece of new evidence to produce, to the destruction of the government case on this head; and what was it? Why, that Captain Pope, when he was no longer in the immediate service of his uncle, when he was in a remote part of the continent, years afterwards, when there was no anticipation of any new trial for Porter, when it was not supposed that any such transaction could take place, in friendly discourse with his associates, with his mess in the company to which he belonged, he *confessed*—that is the word to use—confessed that his testimony on the former trial was not true. He had said on the former trial that he presumed that he got that order at 4.30, because it was dated 4.30, and he accomplished the journey in half
1750 an hour and delivered the order to General Porter at 5 o'clock; with great precision, as if he had a clear recollection about it, he said, "Perhaps within three minutes after five." But to Captain Moale and Lieutenant Jones he confessed that on the way with that order he got lost, and to one of them he said he was from one to two hours, and to the other he said he was a very long time, making the same statement, that he had lost his way in carrying the order.

Now, where is the substance of the evidence for the prosecution on that part of the case? Where is there any evidence whatever to meet that offered by General Porter, that it was received at 6.30 p. m., sundown or after? I cannot, as a lawyer, see any. And how a military man can discover any substance of evidence whatever left on the part of the prosecution, it is impossible for me to imagine. Further than that, you have had Capt. Douglas Pope recalled. He has endeavored to show you how he came. You have had Duffee, the orderly, recalled, and he, too, has tried to show you how he came. I submit that their evidence on this subject, on this new examination, independent of all new evidence, independent of the demolition of their former statements, by the testimony of Captain Moale and Lieutenant Jones, shows that they had not the least idea which way they went, and that they have not now. They tried to pick out a path upon the map; but you have positive proof that Duffee said that until he went and viewed the ground he thought he went around through Five Forks.

What, then, is the fair conclusion from all the testimony as it stands? Is it not that the testimony of Douglas Pope and of Duffee on the former trial ought not to have been credited, and that now it cannot be credited, in the least? The fact is established of their having lost their way, of their seeing no troops on the Sudley road, which from below the old Alexandria pike is where they pretend to have come, when King's division and Ricketts' division must have been blocking up that road entirely, so that the passage of any one would have been a work of extreme difficulty. Yet they did not see a soldier. What is the inevitable conclusion? That they got down to the junction somehow after wandering in the woods, whether by Wheeler's or down by Compton's Lane, or somewhere else; and that they struck the Alexandria road and came down to the junction of the Sudley road is probable. But it is not possible that from there they went down the Sudley road, because then they must have met these troops. The ingenious map-maker for the government has attempted to relieve that difficulty by getting Ricketts off the road. But it will hardly serve the purpose. Ricketts was on the Sudley road, right behind King. There is but one way that they could not have seen a soldier, and that was to cross directly the Sudley road and go down the continuation of the old Warrenton, Alexandria and Washington pike from their junction in the direction of Manassas, and get around some way on the Manassas road, and come up by the junction by Beth-

lehem church, and that is the way they took, and that accounts for their being so long upon the way, and shows the

TIME OF DELIVERY OF 4.30 ORDER.

There is one other remark to be made in connection with the 4.30 p. m. order as to the time of its delivery. There was testimony on the former trial, and I think there is testimony now, that they came up to the junction from the direction of Manassas to the headquarters of General Porter, and it seems to me that there is nothing left whatever of
1751 the case, but to conclude, taking all the parts of the testimony together, that they did come around by that way, and must necessarily, receiving that order some time after 4.30, and that they, by some round-about way, must have got lost. Then you make all the evidence coincide. You accept as true these six witnesses introduced on the part of General Porter, all credible, all intelligent, all respectable, that it was received not before sundown. But there is one other fatal circumstance which I must not omit to mention. In all celebrated cases, I think the experience of every lawyer will permit him to testify that before the case concludes, there is some piece of false evidence foisted upon the case, sometimes even by voluntary evidence from some unknown source, originated and promoted by some unknown party. That has actually taken place in this instance. A third party, a second orderly, one Dyer, has been produced here, who pretends to have accompanied Captain Pope and Orderly Duffee on that expedition. But Duffee does not recollect his presence; if you can accept Duffee's testimony, it is that he was not there, and the most convincing proof that he was not there is what he says himself. I will not recall all the particulars of how he recognized the road when he went down there. He went over the ground with Duffee to find the way, and he found it by an unmistakable landmark of a house with a four-square roof. That was the way he recognized it as he rode over. He says he went with Captain Pope sixteen years ago, and then saw the same house which he recognized last week. Unfortunately for that statement, it turned out that that four-square house was built after these battles were over. He said he did not go quite up to General Porter's headquarters, but that he saw the church by which his headquarters were, and he recognized the church, knew it was a church by the steeple. Well, it turned out upon authentic testimony, which cannot be disbelieved or doubted, that the church never had a steeple. The Recorder has an idea that it was in ruins, a melancholy ruin, and that perhaps two of the walls had fallen in, so that anybody could see that it was a sacred ruin. But that did not impress the man Dyer. He saw a steeple which never had existed. Then he saw General Porter come out of his tent with Captain Pope. But the evidence is clear that General Porter had no tent. And the evidence on which General Porter was convicted before, and which was reasserted by Judge-Advocate Holt in melancnoly tones in his paper to the President, was that General Porter was lying down under a tree, and continued lying under the tree for several minutes after the order was received. But this man Dyer pretended to have seen him come out from around the corner of his tent with Captain Pope. But to crown all, he swears that he went back with Captain Pope, and went direct to General Pope's headquarters. Well, how was that? Captain Pope testified that it was about 8 o'clock when he reached the scene of headquarters on his return, and he was confused at so many camp-fires; he could not tell General Pope's headquarters from those of anybody else, and he

had to go to General McDowell's headquarters to inquire which General Pope's headquarters were. But this witness says they got there before dark, and saw no camp-fires, and did not go to McDowell but went straight to Pope. Now, we are known by the company we keep, and when you find these three witnesses now brought, thus standing together, Douglass Pope, Duffee, and Dyer, what remains to sustain the ground of this prosecution on their evidence and accusation? It seems to me that they all tumble out of the case together.

But there is another new and startling piece of evidence which demonstrates that the 4.30 p. m. order was not received by Porter until sunset. At page 810 of the new testimony, there is a fatal
1752 piece of evidence—two of them—and the Recorder must have been slumbering when he failed to recollect them. The necessary part of the case of the prosecution is that this 4.30 p. m. order was received at 5 or 5.30 o'clock, in time for General Porter to have made an attack before dark. But here is a dispatch which General Porter wrote at 6 p. m., which absolutely negatives, in every line of it, all possible idea of his having received this order to attack, not only from the fact that he says he has no cavalry—and Captain Pope brought him some orderlies as now appears, left three with him—but the whole tenor of the dispatch shows that he had heard nothing from McDowell or Pope for a long time, and did not know what the situation was. Let me read this dispatch:

Failed in getting Morell over to you. After wandering about the woods for a time, I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs; whether you retire or not. I cannot get water, and am out of provisions. Have lost a few men from infantry firing.

Aug. 29—6 p. m.

F. J. PORTER,
Maj. Gen. Vols.

Now, when he wrote that dispatch at 6 p. m., had he yet received the 4.30 p. m. order? That is impossible.

Another thing I must refer to, in order to refute the suggestions made about this. He says: "I have no cavalry or messengers." Where was he when he wrote that? He was at his headquarters at Bethlehem Church. "O," says the Recorder, "he had cavalry." Yes; there were cavalry up by Morell, because, shortly afterward, not getting any cavalry from McDowell under this message, he sends to Morell for some cavalry. The meaning is, not to deny that he had cavalry up at the other end of his line, but none at his headquarters. And that leads me to this—in this place I may as well say it as in any other—that as to the alleged variations and inconsistencies in the various statements of General Porter, and particularly in his opening statement before this Board, there are just exactly two. And the wonder to me always has been, and the wonder to me when General Porter's opening statement was prepared was, that it was possible, or could be possible, to make a statement in which there should be so few omissions or failures of memory as compared with the facts which now appear demonstrated here. There are two. One is a difference of recollection between him and Sturgis, whether he knew of the presence of General Sturgis, and ordered him back to Manassas with his 840 men on that day. There is a direct difference of recollection between them, and, judging it by the ordinary laws of evidence, it looks to me as if Sturgis's recollection was the bet-

ter. But I am thrown into confusion upon that when I refer to Porter's examination upon the McDowell court of inquiry in January, 1863, when he testified that he knew nothing of the movements of Sturgis on that day. The other failure of memory which the Recorder regards as so destructive to General Porter is in this matter of forgetting that he had some cavalry with Morell that day, a part of a Pennsylvania troop—a troop that Morell, to whom the commander says he was to report, but don't recollect reporting, and Locke and Martin, who were in the front, did not see or have any knowledge of.

So, if the testimony of those cavalrymen is to be taken, that must stand confessed, that failure of memory. But it does not in the least
1753 affect the merits of this case, nor in respect to any material point the deductions that are necessarily to be drawn.

That ends what I have to say upon the 4.30 p. m. order, because I assume it to be demonstrated that not being received till sunset, it was then too late to make the attack which was directed by it. That Porter, acting upon the natural impulse of a loyal and devoted soldier, receiving such an order as that from his chief—that his first impulse was to carry it out, is manifest. What did he do? Did he, as was pretended by the Judge-Advocate, and I think is still insisted by the Recorder, send an order to move forward two regiments supported by two more? No. It appears now clearly proved upon the record, that that had all been already done upon some previous but false report that the enemy before him were retreating. But he sent an immediate order to General Morell to make an attack with his whole force, and he followed it up in person instantly to the front, and with such speed that he was guilty of a possible omission which has been charged upon him as an act of criminal neglect. What was that? Why, that Sykes being with him at headquarters, he hurried forward to the front, where Morell was ready to begin an attack, in such haste that he omitted to tell Sykes of the receipt of the order. To my mind, that is only clear proof of Porter's zeal to carry out the order. He found that he had been under a misapprehension about the withdrawal of the forces behind Bull Run, indicated by his dispatches shortly before. He found that General Pope now was insisting that he should make an immediate attack, and he hastens forward. What is in his mind is to carry out that order. He first sends Locke ahead with his order to make an immediate attack with his whole force. He goes to the front, and if it is true, if Sykes' memory is not at fault on this point, he went forward without ordering Sykes or communicating the order to him. If I understand the military maneuvering the order was properly to be given as it was given to Morell to make the attack. Sykes, with his division, was right behind, ready to be brought up in instant support. He was in immediate contact. Now, what is all his parade of rhetoric and of assertion about this failure to exhibit this order to Sykes? It only shows the instant zeal with which Porter sprang to obey that order. Then what happened? He got to the front; he found Morell about ready to obey that order, and darkness was already upon them. I accept the military authority that has been brought into the case, to the effect that it was impracticable then to make an attack. General McDowell said on the former trial that he might have made an attack within an hour after receiving the order. He confessed, on the present examination, that he knew he was wrong about this, confessed that Porter's position was in fact not so far advanced as he had supposed; he will not say exactly how much, but it would have taken much longer to make the attack here ordered than he had previously supposed. Colonel Smith, who before testified, to the

destruction of General Porter, that that attack might have been made within an hour, concurring in the opinion then given by McDowell, now comes and frankly states that it would have taken not less than two hours. Suppose it to have been in the neighborhood of seven o'clock, already nearly dark, when Porter got to the front, could he but concur with the conclusion of his skillful subordinate, Morell, that it was too late—two hours, nine o'clock—to complete the movement and push forward into contact with the enemy? I suppose it is a military absurdity to pretend that. So I leave that branch of the case.

1754 VIOLATION OF THE 52D ARTICLE OF WAR.

Now in respect to those more grievous charges, as they seem to me to be. Having acquitted General Porter of all that can possibly be charged against him under the head of disobedience, now comes the question of whether he was guilty of the frightful crimes charged upon him in the specifications under the second charge, imputing to him shameful treachery and misconduct in the face of the enemy, running away when he knew that a battle was raging on his right, in which the rest of the forces were engaged, by which even the capital of the country itself was involved in danger, and moving off without the least effort, or lying still upon his arms all day without the least effort to assist. You will observe that all this has practically been disposed of in our discussion of the previous question under the joint order, if there was no retreat. The whole pretense of a retreat was based upon the dispatch to McDowell and King, that, as the sound of battle seemed to retire, indicating to him that the main part of our forces were withdrawing behind Bull Run, as the joint order had contemplated the necessity of doing, he had made up his mind to retire also. I never have been able to discover any just ground of complaint as to that suggestion of his. If the circumstances were what he supposed, and what the dispatch shows he supposed, it was not acted upon; there was no movement whatever such as the dispatch contemplated; there was no retreat. The substance of the information upon which he had written that dispatch was immediately contradicted, and he moved forward and directed an advance instead of a retreat. But under the application of the joint order, under General Pope's reiterated injunction in that order that it might be necessary, and that it probably would be necessary, for all of that army to fall back behind Bull Run that night, and under no circumstances to get into any position by which they could not fall behind Bull Run that night, if at three or four or five o'clock in the afternoon he became satisfied from the sound of battle, as this dispatch shows he did, that the rest of the army was falling behind Bull Run, what ought he to have done? Ought he to have left his little band of 9,000 or 10,000 men exposed to the whole rebel army of now 50,000 instead of 25,000, and he the only outpost and wholly unsupported? Well, I know nothing of soldiery, but it does seem to me to be the obvious dictate of common sense that, if that was his belief, the purpose of following the rest of the army behind Bull Run, as indicated in this message to McDowell and King, was not only eminently proper, but under the circumstances was absolutely necessary; and when that information is contradicted, then you find that the first thing he does is to move forward.

As to the numbers of the respective armies that day, I do not propose to afflict you with any further discussion. I have taken it for granted that, from all the statements that have been made up to this time, Porter's force consisted of 10,000 men; that is the proof upon which he was

tried before; that is the theory upon which this case has been tried throughout, until the day before yesterday, when the Recorder, upon what we regard as mistaken and fictitious methods, figured it at 12,000 or 15,000. Pope thought it was 12,000, but the actual figures show 10,000. Neither do I know or care what the exact number was of the rebel forces opposed to him on Dawkins' Branch, or between there and the pike; they were all in reporting distance of each other. It was one united force, and an attack by him upon that force at any time after McDowell left him would have brought down together, concentrated upon any part of that ground, the whole of Lee's and Longstreet's
1755 force. And what had he reason to believe they were? He and McDowell agree, upon the testimony as it now stands upon the record, that they knew there were at least 14,100 who must have got there before they did, and they took it for granted that the rest were coming.

Now, what is the nature of the question under this specification? We have got the question of disobedience out of the way. That is all gone. I assume that we have made a complete case in answer to the charge of disobedience. The question on this part of the case then is, the retreat being out of the way, whether it was his duty to make an attack between the time of McDowell's departure, taking King with him, and the receipt of the 4.30 p. m. order. Now, I am perhaps not capable of discussing the military principles that must govern such a question; but I can state upon the one side the theory upon which he was found guilty because he did not attack, and I can state, upon the other, the facts as they now stand, and I think you will agree that, if those facts as they have now been proved had been before that court-martial, there never would have been the least idea of convicting him. In the first place, we have the fact of the actual force that he had; and, substantially, there is no difference between the former trial and this in respect to that. King and Ricketts having been withdrawn from him, he was left with, say, in round numbers, 10,000 men. The Recorder pretends, by a novel method of reckoning, that he had 33,000 men. The triumph of the science of mathematics is here well illustrated. He had his own 13,000 (magnifying this 10,000 to 13,000); then he had King's and Ricketts' 17,000; then he had Banks' 10,000—40,000; a great many more than I supposed. Forty thousand men, so says the learned Recorder, and that he ought to have made an attack. Well, yes; if he had 40,000 men, I agree that he ought to have made an attack. But, when it is necessary for the Recorder at this late day to resort to such marvelous calculations, is it not a pretty clear abandonment of the case as it always stood before and as we think it stands now? Why bring into this case all this rubbish about Banks? Was Banks under the command of Porter? Why didn't Pope, anxious as he was to have Porter's conviction stand in former years, make that suggestion? Why didn't the Judge-Advocate-General, reciting to the President all the evidence there was against Porter, say anything about Banks? That is the triumph of the Recorder's ingenuity; that is a new invention, and, I think, a weak invention of the enemy. General Banks (says the Recorder) was at Bristoe or Kettle Run. There has been a quite a deal of dispute and discussion, raised by him upon the evidence of Professor Andrews, and of his superior officer, General Gordon, as to the precise point were Banks was, whether at Bristoe or at Kettle Run. I don't know where he was. The Recorder says it is quite manifest that it was not Porter's force, but it was a brigade of observation from Banks' force, sent out half a mile or a mile from Bristoe, that caused the transportation of Wilcox's force over

to their right wing in the afternoon of the 29th. But is it not too obvious for dispute that it was some movement of Porter's 10,000 men close upon the enemy, so close that Longstreet would not let Lee attack, although Lee wanted to attack, that dictated to them that precautionary transfer of Wilcox? If that was not sufficient cause for transferring Wilcox over there with his three brigades, how was the advance of a single brigade of observation, away down within a mile of Bristoe, cause for the transfer of Wilcox? The Recorder says the enemy in that movement was waiting for something to turn up. Well, something had already turned up. Porter had turned up, and was there with his 10,000 men close upon them. It was undoubtedly some threatening move-
1756 ment upon Morell's part; something done, or apparently threatened to be done, that called for that transfer. So I do not think it worth while to discuss that question any more.

The character of the position at Dawkins' Branch, held by Porter for offense and defense, is proved by the maps and surveys, and the testimony of Warren, of Morell, of Sykes, and others. Did the former court-martial understand that? The maps that were before them show that they did not. For all that they knew, Porter, wherever he was, had nothing but the clear open country before him, without a single rebel soldier intervening between him and Jackson's right wing. On their theory, an attack was just as practicable as it is upon the Recorder's theory, as evidenced by the map which I have been enabled to incorporate into my argument, because there was nothing to prevent his attacking. Now, here is this new fact of the introduction of anywhere from 14,000 to 25,000 men absolutely commanding and closing the way. They outflanked him on his left and they outflanked him on the right, clear away to the Warrenton turnpike. Now, where is the soldier—we challenge him to come forward—who will say that, under these circumstances, General Porter ought to have made an attack? General Pope does not dare say so. If he could have said that, he would have been here to say it; he would not have waited for any subpœna; if he, as a soldier, could have demonstrated to you, as soldiers, that Porter, in that situation, ought to have attacked, he would have come, because he is anxious to support this prosecution, and keep General Porter under this brand of infamy which he has laid upon his head. No; I don't believe there is a soldier in this or any other country who dares to come and say that Porter, under those circumstances, should have made an attack.

Then what else is there? There is the difference of position. I speak not now of the ignorance of the court-martial of the ground which has been so clearly laid down before this Board. I speak now of the confessed difference as to Porter's position, the relative position of Porter to the right wing of the rebel army as it was then believed to be and as it is now demonstrated to have been. It is involved in the question of the then supposed absence of the Confederate force which we now know, and was then by Porter asserted, assuredly to have been present between Jackson and Porter. They thought, and all thought apparently—McDowell certainly thought—that Porter was much nearer the Warrenton turnpike than he was. They all thought that Porter had reached the second run that crossed the Manassas and Gainesville road, one mile in advance of where he was. The maps show it. The sworn statements show it. And then they thought that he was behind the right wing of the rebel army, and very near to it; that there was nothing there but Jackson's force, as has been demonstrated to you over and over again—nothing there but Jackson, and that there was no pretense of execution on Porter's part of his recognized duty, the situation being

what they supposed it was, of going in, orders or no orders, and attacking the right flank and rear of Jackson's force.

WAS A BATTLE "RAGING" ALL DAY?

There was another thing. The court-martial believed, and it was so sworn, that there was a battle raging all day in his plain sight and hearing. Well, was there? You all know about that now. The Recorder called a host of witnesses to prove that there was a battle. It has enabled us to develop exactly the situation. There was not a battle raging with continuous fury from daylight until dark, as Pope, in his dispatch
1757 of the next morning, asserted. There was a series of successive spurts, as Heintzelman said; there were skirmishes all along the line from just below the Warrenton pike up to Sudley Springs and Sudley Church. Was there no battle? Why, yes; there were lots of them. Every regiment, apparently, and every brigade, had a battle of its own. But they were no more connected than if one had been in Maine and another in Florida, and the rest in interlying States. There was no support of one attack by another attack. Let me read what General Schurz said upon that subject. He was there; he was engaged in it. Heintzelman says there were successive spurts. General Schurz says:

> If all those forces, *instead of being frittered away in isolated efforts*, had co-operated with each other at any one moment after a common plan, the result of the day would have been far greater than the mere retaking and occupation of the ground we had already taken and occupied in the morning, and which, in the afternoon, was for a short time at least lost again.

We have prepared, and will give you, a synopsis in print of what these successive spurts were, where they were, and when they took place. It demonstrates that there was no continuous battle, and they account for the fact that General Porter, who, you will remember, was left alone, without a word from General Pope, all this time, never heard anything but artillery firing. The Recorder says, "O, yes, he did." General Marshall, in charge of his skirmish-line, makes very strong statements of seeing from that skirmish-line, on the other side of Dawkins' Branch, the rebel army and Pope's army in fight, moving backwards and forwards, heard their yells, and that there was no man in our force who did not feel assured that Pope's army was being driven from the field. General Marshall stated that. I have no doubt that, so far as he was concerned, it was entirely true. There is not the least evidence that he made any such statement to General Porter. But what was it? He does not fix the time on his first examination; but on this new trial he does. What was it? What conflict was there that day that answered all these conditions that could possibly be seen from any ground in the neighborhood of Dawkins' Branch? It was the fight between King's division and Hood, when King was thrust down on the turnpike just at dusk. There is not any other fight that day, on that field, that could possibly have been seen or heard from that part of the country, that could answer the conditions described by General Marshall, and that does answer exactly to them. Mr. Maltby tells me, from a very careful inspection of the record, that, until that fight with King's division, on no part of the line was there, at any time, a larger force than eight regiments concerned in any one of these skirmishes or conflicts. There was a great deal of slaughter, undoubtedly. What principle it was conducted upon no historian has ever yet stated. We have a promised history of Colonel Smith's, which may probably explain

it, but there never yet has been any explanation of that method of warfare. Well, I have one which I will give you presently. I think it was conducted upon the general laws of war as laid down by General Pope when he took command of the army; upon the principles of attacking whenever you see anybody to attack, without regard to the circumstances or the consequences, exactly according to the military code of the Irishman at Donnybrook fair.

But, now, what is the real fact as to its being a continuous battle, within sight and hearing of General Porter, and raging all day? We have produced the evidence of every man in his division who is worth believing that until General Marshall saw the fight between Hood and King they saw nothing. They heard only artillery firing. And
1758 there was General Porter, awaiting news from Pope and McDowell. The news from McDowell that he got, said that all went well with him towards Bull Run. It didn't go well anywhere else. I suppose that what Porter thought was that McDowell had got in there and formed a connection. The evidence shows that King, or rather Hatch (as King was absent), marched up the Sudley Spring Road, going to and fro on contradictory orders from Pope and McDowell, and that he did not get into any action until this disastrous run on the pike, when he was rushed down through all the other forces at about sunset or after. I suppose that a corps commander, as I have had occasion to say on this subject, is bound to take notice of the situation, and if he was aware of circumstances and facts wholly unknown to his commanding general at the other end of the line, he was bound to act upon what he saw before him, was he not? Now, was there any time that day when he ought properly to have attacked, and when it would not, on the contrary, have been a fatal and stupid blunder, for which he would have been grossly culpable, and chargeable with all the destruction of life that would have been occasioned, if he had made an attack—was there anything known to him that would have justified the sacrifice of his corps by an attack that day? We know now that if he had sacrificed his whole corps by the blunder of an attack, it would not have afforded any relief to Pope's army. There is a demonstration of this, as it seems to me, in this case that the whole world would be content with, in confirmation of Longstreet's testimony, that it was Porter's presence there that prevented an attack by Lee that day. And what is the demonstration? What happened next day when Porter was withdrawn by the orders of General Pope from this position? What is the evidence? What is the irresistible conclusion from the proofs as to what happened on the 30th? Why, that it was only Porter holding on to where he was against every threat and every doubt that prevented on the 29th the slaughter that was consummated on the 30th. What could have justified Porter in withdrawing his force from there on the morning of the 30th but the positive orders of General Pope, who still remained, or claimed to have remained, in absolute ignorance of the intervening situation.

Remember that day of the 30th. When General Pope withdrew General Porter's force and brought it up with him to Groveton, he could not believe, Reynolds and Porter together could not convince him, that the rebel army under Lee and Longstreet, was there. Had not he said in his dispatch of the previous day that they were coming at such a rate as would bring them in by the night of the 30th or the 31st? No, he could not believe that the whole rebel army was then already there. He said they were in full retreat even then, that morning of the 30th. He launched his army upon them supposing that they were in full re-

treat, when they were there in that fortress, that impregnable fortress, upon the Independent Railroad cut, and thence stretching away upon these heights down to the situation where Porter had left them that morning. Well, you know what slaughter took place on the 30th. You know it was when Porter was withdrawn from the position which on his judgment he had maintained the day before. It seems to me that the truth as to the situation on the 29th and the propriety of Porter's conduct on the 29th are demonstrated by what appeared to follow on the 30th, when, contrary to his own judgment, he was withdrawn from this fortified position on Dawkins' Branch, which had up till that time held the main force of the rebel army in check, and the whole Federal force was huddled together on the inside of the circle in front of the Independ-
1759 ent Railroad cut, and upon the successive heights, beginning with Douglas height and extending down to the Manassas and Gainesville road, all along which the rebel army was intrenched.

At this point, if the Board please, let me call your attention specially to two maps, one called Map No. 4, showing what we claim to be the positions of the respective forces during this time which is covered by these general specifications, under the second charge, and irrespective of any specific order to attack, showing what we now know to have been the situation, and what General Porter then substantially believed to be the situation. That map has been criticised, and unjust reflections cast upon Captain Judson in regard to it. So I will beg leave to state the facts in regard to it. The map itself is one of the Government maps made for this case, made by General Warren and by Captain Judson—the great map from which this is reduced. When the evidence was all in substantially—the evidence of those positions especially upon which we rely, we desired General Porter to have a map, that soldiers would understand, prepared, depicting the respective positions of the Confederate and Federal forces, from 6 o'clock until 12 on the 29th. Captain Judson was employed by him personally, at his own expense, outside of his official time—that is, not involving his official time—to do what? To make these positions? No. Simply to project them upon the map as given to him from the evidence. General Porter and his counsel, from the evidence, defined the positions, and we believe and are certain that they will be sustained by all the evidence in the case that is worth considering. What Captain Judson did in that matter I cannot see the least impropriety in his doing, any more than if our learned friend, the Recorder, is employed, as I hope he often is, to try and argue cases at private expense for some party when the Government does not require his services. There is no time now to discuss these positions. Whether they are right or not this Board will have to determine. The only point of conflict appears to be in respect to these movements sworn to by Sigel and Schenck in the neighborhood of the Warrenton pike, which took place on the noon and afternoon of the 29th. We believe these positions fixed upon this map to be true, although they refer you not to the original, but to the altered time of the movements, as stated by Sigel and by Schenck. [This map has already been referred to as Map D.]

Sigel alters his testimony from his first statement. If you look at his second statement, you will find that it substantially accords with these positions. If you will take the time stated in Heintzelman's diary for the movement by Reno, and then take the testimony of the only man from Reno's force who has been examined, the only man of substance, Stevens, and then take Benjamin's testimony, and that of General Reynolds, as it stands in the old record, you will find that they all fully substantiate the testimony of the Confederate generals, and accord with

these positions. But, in the view we take, it matters very little for the purpose of these general charges that I am now considering exactly where the force of Longstreet was, if only it was in such a position that it could and did command these heights on the other side of Dawkins' Branch, and could reach them before General Porter could. And to accompany the map just produced, I offer another map prepared in the same way, showing what happened on the 30th, and I believe that is the last map that I shall ask to have incorporated in my argument. This probably puts to the test the wisdom of Porter's course on the day before. (Map shown to the Board.) *There* (on Map No. 4, Map D) are the forces as they were substantially from twelve to six on the 29th.

1760 How is it possible that, with Porter's force where it is thus shown to have been, this Federal force under Pope could be destroyed?

Here on Map No. 6, of the 30th, is the situation when, by Pope's orders, General Porter was drawn over into the very center of the circle formed by the Confederates, whereby the Confederates were enabled to advance unobstructed to their final positions as here shown and surround and slaughter our forces as they did upon the 30th.

I suppose that this Board can never forget the touching testimony of General Warren as to the complete and hopeless slaughter of his entire force, when this position as depicted on this map was consummated.

That event came about by an abandonment of what General Porter had deemed a wise position, and had maintained against all hazards and doubts the previous day. [This map of the position on the 30th will be found in the Appendix as Map H.]

DISPATCHES OF THE 29TH.

Now, if the Board please, the Recorder has had a great deal to say in respect to the dispatches that passed between General Morell on the 29th and General Porter. I do not propose to weary the Board with a reconsideration of these. That has been done in the statement presented by Mr. Bullitt, and most carefully perfected by him.

Those dispatches show no inconsistency; they fully explain the much complained of message to McDowell and King, on the strength of which Porter was convicted of retreating. Now there are some things to be said in regard to these dispatches. General Porter remained at the front after McDowell left him. McDowell did not go until somewhere between twelve and one o'clock; that is certain. Porter remained a long time after that at the front, and came to the rear, and established his headquarters at Bethlehem church, somewhere from two to three o'clock, probably at three o'clock. These written dispatches between him and Morell must have begun about that hour. I do not suppose there was any need of written dispatches when both were at the front. It is not likely that we have all the dispatches. If we could have all that General Porter wrote that day, if none were withheld from us by the prosecution, there would not be a single circumstance in all the details of that afternoon left unexplained. If we could have the dispatch that General Porter sent to General Pope by Weld; if we could have the other dispatch that he sent to General Pope in answer to the 4.30 p. m. order, that came by Douglass Pope, explaining the situation then in regard to the force in front of him, in regard to the time, showing the exact time when that was received, we should have everything. But it does seem to me that those dispatches now before you tell substantally

the whole story, and make out a perfect case, under all the charges, in respect to the conduct of General Porter on the 29th.

The Recorder, for some reason or other, has seen fit to say that Porter's headquarters were two and five-eighths miles from the head of his column. Well, if it were so, I don't know that there would be anything wrong if his column were two and five-eighths miles long; but, unfortunately for the statement, his column was only a mile and three-quarters; Morell at one end of it, and he at the other. I think you will find it admitted by Judge-Advocate Holt, on his written argument, that Sykes, who was with Porter at his headquarters, was in the proper place. I suppose that this is an admission that General Porter was in his proper place, where he could not only command his whole force in front of
1761 him—where he could command his own force, and get the promptest intelligence of everything that was going on in front, and at the same time be in a situation to communicate with Generals McDowell and Pope, and to receive the messages that General Pope did not send him. General Lee, it seems, had his headquarters in the rear of his force, on the 29th and 30th. General Pope started out in the morning, with his headquarters at Centreville, eight or ten miles away, and did not come on the field until after one o'clock, and then he established his headquarters a little farther from his foremost force than General Porter was from his. General Pope said that he was in the presence of the enemy when he was at Centreville, so that I do not think there is any difficulty in this matter of the distance of General Porter's headquarters from his front.

VALUE OF GOVERNMENT TESTIMONY—GENERAL M'DOWELL.

The whole case, so far as the facts go, has now been completely disposed of. There is not a rag left of the government case against General Porter; and yet there is something that remains. There are the opinions of two witnesses, who, if their opinions were entitled in this particular case to weight, ought to receive great consideration. Those are the opinions of Generals McDowell and Pope. What I propose further to say in respect to them, to complete this review of the affairs of the 29th, is, that General McDowell and General Pope have placed themselves in such a position before this Board, that you must utterly reject their opinions when given adversely to General Porter.

About General McDowell enough doubtless has already been said. The fatal mistake that he made on the former trial, or that he alleged was made, was in allowing his testimony as to what he said to Porter to be construed into an order to make an immediate attack with Porter's whole force on the right flank and rear of the enemy in front of him. He claimed this time, and said, that he didn't mean any such thing; he didn't mean that General Porter should have done anything more than we have fully proved that he did do. Well, I think that should have removed General McDowell's evidence, and the weight of his opinion, if there is a shred of his opinion still left in the case, should have removed it all. But I must call attention to two or three circumstances in respect to General McDowell which would wipe out, as it seems to me, from the case, the weight of his opinions, because of bias and hostility from some cause, I don't know what, to General Porter. Let us see. In 1870, I think it was, he, in answer to the petition or application of General Porter to the President of the United States for a reopening of his case, prepared for circulation and distributed certain evidence, as he called it, to counteract that claim. What was it? It was an account by General

Jackson of the battle of the 30th, but purporting to be of the battle of the 29th. With what object? To show that General Porter must have known that there was a fierce contest going on between the Federal troops and the Confederate troops at Groveton. Well, it now so happened that that account of General Jackson related not to the 29th, but on its face related to, and purported to relate to, the 30th. And the worst part of it was, that the ferocious Federal onsets referred to by Jackson, which were intended to be a demonstration of Porter's knowledge on the 29th, from his distant position at Dawkins' Branch, that there was a furious battle raging, were Porter's own fighting of the 30th. It was his impetuous attack; it was his brave troops of the Fifth Army Corps on the 30th that made such a demonstration—such onslaughts, such irresistible attacks upon Jackson's front, that he was com-
1762 pelled to call for re-enforcements, and that was put forth to the public as a demonstration that Porter, in his distant position on the day before, must have known that that very state of things was going on then, and thus to find cause to condemn his inaction on the 29th, the day before.

Well, the question is as to General McDowell's purpose in this. I am going to read to you Jackson's account of what then happened on the 30th, because, with that map of the 30th before you, it can be more easily followed. You know what took place, and you know who did the great deeds of that day. As General McDowell now admits, it was General Porter and his troops that bore the brunt of that fight. Now, the question is whether General McDowell, who was charged with the superintendence of that whole work of the 30th—who was charged with the whole business of the pursuit—in the first place, whether he ever read this, which I hope he never did; and if he did read it, whether he could for a moment have remained of the impression that it referred to the 29th. This is Jackson's account of that fight, and you will see that nothing approaching this or anything like it happened on the 29th:

After some desultory skirmishing and heavy cannonading during the day, the Federal infantry, about four o'clock in the evening, moved from under cover of the wood, and advanced in several lines, first engaging the right, but soon extending its attack to the center and left. In a few moments our entire line was engaged in a fierce and sanguinary struggle with the enemy. As one line was repulsed another took its place, and pressed forward as if determined, by force of numbers and fury of assault, to drive us from our position. So impetuous and well maintained were these onsets as to induce me to send to the commanding general for re-enforcements; but the timely and gallant advance of General Longstreet, on the right, relieved my troops from the pressure of overwhelming numbers, and gave to those brave men the chance of a more equal conflict. As Longstreet pressed upon the right, the Federal advance was checked, and soon a general advance of my whole line was ordered. Eagerly and fiercely did each brigade press forward, exhibiting in parts of the field scenes of close encounter and murderous strife, not witnessed often in the turmoil of battle. The Federals gave way before our troops, fell back in disorder, and fled precipitately, leaving their dead and wounded on the field. During their retreat the artillery opened with destructive power upon the fugitive masses. The infantry followed until darkness put an end to the pursuit.

An exact description of the transaction of the 30th, of which General Porter bore the brunt. Now, is it possible for General McDowell, procuring that, publishing it, putting a heading on it that it referred to the transactions of the 29th, to have read it and not seen at once that it referred not to the 29th, but to Porter's fight, as we may well call it, of the 30th? I do not wish to throw the least discredit upon any general; I am only speaking as I have a right to speak of what stands recorded here, and to speak of the weight to be given to General McDowell's opinion, as adverse to General Porter's. If it had stopped there it would have been bad enough. But what more have we? Why, when that

came out, Colonel Smith, who seems to be a deluded but a reasonably truthful witness, at once protested that it was not true; that that was a mistake; that it referred not to the 29th, but to Porter's fight of the 30th. Well, the question was raised, and it became a public, bruited, agitated question among military men. What happened? That question came to General McDowell's ears. What should have happened? I suppose fair play is a rule among soldiers as it is among civilians. Here was this report gotten up by General McDowell, circulated by him for the purpose of thwarting Porter's application for a rehearing, which necessarily must have been to his infinite damage and prejudice. The question was publicly raised whether General McDowell had not made a mistake in his dates—whether he had not erroneously published the events of the 30th as the events of the 29th. I should suppose
1763 that the first instinct of a soldier in such a case would have been to find out whether he had made a mistake or not. It would be the first impulse of anybody outside of the Army, and it seems to me that it would be of every man in the Army. Well, now, what did General McDowell do? Knowing that the question was agitated, and that he was suspected of having made this mistake, to the great damage of his brother soldier, who was suffering under this undeserved ignominy, what did he do? He did nothing. He let it go uncorrected. Why? Now, do not let me do him any injustice. Let me show you his own words. Why did he let it go uncorrected? I read from page 768 of the record:

Q. Now, when this doubt was raised, whether it did, in fact, refer to the 29th or the 30th, did you take any pains to find out?—A. I did not; but the "pains" were taken in that being sent on to Washington, to see whether it was a correct extract, and they said it was.

Q. Did it occur to you then, that if this mistake had been made, and it, in fact, referred to the 30th, and not to the 29th, an injustice had been done to General Porter, which might be corrected then?—A. You must understand, that up to within a few minutes, I never knew what I have since admitted to be the fact, that that statement did not refer to the 29th.

Q. But when it did become a matter of question, whether it referred to the 29th or 30th, you did not take any pains to find out which it did refer to?—A. No, sir.

Q. Did it occur to you, at that time, that if it was a mistake, an injustice had been done to General Porter by that, which might, and should then be corrected, at that time?—A. No, it did not, *because I did not think it my province to do it.*

Not his province to correct an error which he himself had made to the prejudice of another soldier, who was suffering under this ignominy! It cannot be that he wants fair play for General Porter. It cannot be, that any opinion that he expressed ought to be for one moment considered. There is one other little matter, in respect to General McDowell, to which I call your attention in that same connection, although it seems to me that what I have just shown is enough. That is fatal, is it not, to the impartiality of any opinion of his involving the conduct of General Porter?

GENERAL POPE'S TESTIMONY.

Now I come to General Pope, whose opinion is so much relied upon by the prosecution, and, in fact, his is now the only remaining opinion. I suppose it may fairly be said to have been abandoned by his contemptuous refusal to come before this Board and support it. But, understanding that it may be claimed differently, let us see how he stands. It seems to me that there is exhibited upon this record a deadly hostility on his part to General Porter, and a confession by him of personal interest in the question of Porter's guilt or innocence; and there is some-

thing more exhibited, if I understand the matter right. He has a most peculiar congenital defect; I mean his way—constitutional with him and peculiar to him—of looking at things and stating things; his method of stating the truth, if that is the proper word. He will tell the biggest kind of a "truth," that is out of all relations, not only with all truths known to other people, but with his own truths as he has seen them and stated them the day before. Now, if that be so, his opinion certainly ought not to be regarded as of any great force. In respect to that, I shall be under the necessity of calling your attention to only a few instances. There is a disease called "color blindness," when a man cannot distinguish one color from another; when he will look at the red diamonds of a colored window, and say that they are green, or
1764 at a yellow light, and declare that is blue. It is no fault on his part.

It is a natural, inherent, constitutional defect. So it seems to me that there is such a thing as blindness to the truth, and inability to recognize the existing relations of things. That seems to be the infirmity of this general. Let us see—he did declare, did he not, in the presence of General Ruggles, on the 2d of September, that he was entirely satisfied with all of General Porter's explanations in regard to these much-complained-of matters. He met him cordially at Centreville, in the presence of the witnesses, General Webb, and General Green, and General William F. Smith. Now, that would seem to be a pretty strong contradiction of all his opinions and charges before. But, as to this natural infirmity of his, I want to call the attention of the Board to certain written statements. At page 234 of the court martial record is his account of the battle of the 29th. I will only read one sentence. It was written on the morning of the 30th, at 5 a. m.:

We fought a terrific battle here yesterday with the combined forces of the enemy which lasted with continuous fury from daylight until after dark, by which time the enemy was driven from the field, which we now occupy.

If he did not know anything of the presence of Longstreet, it is a very curious thing to find here a statement that he had been fighting against the combined forces of the enemy; and if he knew that, as he swore upon the court-martial, he came upon the field about twelve or one, and practically put a stop to hostilities until about four, it is a very remarkable thing that on the next morning he saw the truth to be in this way:

We fought a terrific battle yesterday with the *combined forces of the enemy*, which lasted with continuous fury from *daylight until after dark.*

Then, at 9 p. m. on that day he wrote another dispatch, which is contained in General Porter's opening statement, at page 101. You know the facts of the battle of the 30th, that it was brought on by an assault which General Porter was directed under General McDowell to make, and that the assault was directed upon the assurance that the enemy were flying in full retreat. Well, they made an assault. They were almost cut to pieces. Blood flowed like water. Thousands of brave men perished, and this is the account that General Pope gave of it that same night, 9.45 p. m., from Centreville:

We have had a terrific battle again to-day. The enemy, largely re-enforced, *assaulted our position early to-day.* We held our ground firmly until 6 p. m., when the enemy, massing very heavy forces on the left, forced back that wing about half a mile. At dark we held that position. Under all the circumstances, both horses and men having been two days without food, and the enemy greatly outnumbering us, I thought it best to draw back to this place at dark. The movement has been made in perfect order and without loss. The troops are in good heart, and marched off the field without the least hurry or confusion. *Their conduct was very fine.*

That refers to Porter's troops especially.

We have lost nothing, neither guns nor wagons.

Well, General Ruggles, his aide-de-camp, who was required to pen this dispatch for him, says, at the time it was written:

"General, I saw some guns lost, I saw some wagons lost. You are mistaken there, are you not?" He said, "Well, write it. We have lost nothing, neither guns nor wagons!"

Then he comes to Washington and is stung to madness by the telegrams upon which the Recorder has relied so much, and that madness, as it seems to me, has continued until this day.

Next I want to call your attention to his report of September
1765 3, at page 1116 of this record. That is one of the most remarkable manifestations of this peculiarity of General Pope that I have ever found. We know exactly now the orders that General Pope gave on the morning of the 29th. The history of this report is that it was written for the purpose of laying the foundation for the prosecution of delinquent officers, as claimed or stated in his report to the Committee on the Conduct of the War. They wanted the actual truth, and here he states it, as he *then* saw it, speaking of what happened on the morning of the 29th. You know what the orders were then? There was a written order to Porter to march upon Centreville at daylight. Then a verbal message, followed by a written order from him to march upon Gainesville, and then the joint order. Now, here is the way General Pope states it:

I also instructed F. J. Porter, with his own corps and King's division of McDowell's corps, which had for some reason fallen back from the Warrenton turnpike toward Manassas Junction, *to move at daylight in the morning upon Gainesville along the Manassas Gap Railroad,* until they communicated closely with the force under Heintzelman and Sigel, *cautioning them not to go further than was necessary to effect this junction,* as we might be obliged to retire behind Bull Run that night for subsistence, if nothing else.

It shows also his construction of what he got jumbled up here with the joint order cautioning them not to go further than necessary to effect this junction. Did the Recorder ever see that?

Porter marched as directed, followed by King's division, which was by this time joined by Ricketts' division, which had been forced back from Thoroughfare Gap by the heavy forces of the enemy advancing to support Jackson. *As soon as I found that the enemy had been brought to a halt, and was being vigorously attacked along Warrenton turnpike, I sent orders to McDowell.*

Now, here are two orders, which nobody else has ever heard of:

To advance rapidly on our left, and attack the enemy on his flank, extending his right to meet Reynolds' left, and to Fitz-John Porter to keep his right well closed on McDowell's left, and to attack the enemy in flank and rear, while he was pushed in front. This would have made the line of battle of McDowell and Porter at right angles to that of the other forces engaged.

Can you conceive of a general who had commanded three or four days before, and had issued these written orders which we have been considering here, that he should state it in this way, unless he was suffering from the disease which I have imputed to him?

POPE'S REPORT OF JANUARY 27, 1863.

Then what is the next? His official report, made to the government, and withheld, for some reason or other, from publication, until the evidence in General Porter's case was all in. There are some rousing statements of "truth" there to which I would like to call the attention of the Board. Referring to the 29th, on page 19, he says:

I sent orders to General Porter, *whom I supposed to be at Manassas Junction, where he should have been in compliance with my orders of the day previous, to move upon Centreville at the earliest dawn.*

Well, that whole history has been explored, and nobody but General Pope has ever known of any order to General Porter that day, the 28th, but *to stay at Bristoe until he was wanted*, and it was at Bristoe that he was ordered to move upon Centreville.

On page 20:

I also sent orders to Maj. Gen. Fitz-John Porter, at Manassas Junction, to move forward with the utmost rapidity with his own corps and King's division of McDowell's corps, which was supposed to be at that point, upon Gainesville, by the direct road from Manassas Junction to that place. I urged him to make all speed that he might come up with the enemy and be able to turn his flank near where the Warrenton turnpike is intersected by the road from Manassas Junction to Gainesville.

1766 And at page 23:

It was necessary for me to act thus promptly and make an attack, as I had not the time, for want of provisions and forage, to await an attack from the enemy; nor did I think it good policy to do so under the circumstances.

During the whole night of the 29th, and the morning of the 30th, the advance of the main body under Lee was arriving on the field to re-enforce Jackson.

Think of this. Months after the events he still insits that the main army of Lee came through Thoroughfare Gap during the night of the 29th, and the morning of the 30th, to get on to the field.

Every moment of delay increased the odds against us, and I, therefore, advanced to the attack as rapidly as I was able to bring my forces into action. *Shortly after General Porter moved forward to the attack along the Warrenton turnpike.*

This is the 30th. See how he recognizes the truth on the 30th.

And the assault on the enemy was made by Heintzelman and Reno on the right. It became apparent that the enemy was massing his troops, as fast as they arrived on the field, on his right, and was moving forward from that direction to turn our left, at which point it was plain he intended to make his main attack. I accordingly directed General McDowell to recall Ricketts' division immediately from our right and post it on the left of our line with its left refused.

Now, here—

The attack of Porter was neither vigorous or persistent, and his troops soon retired in considerable confusion.

Certainly the mind that penned that sentence, knowing and seeing what he did of Porter's conduct and of the conduct of his glorious troops of the Fifth Army Corps on the 30th, is suffering under some serious perturbation. Now, the report to the Committee on the Conduct of the War made by General Pope, at page 190, has another startling "truth." It is, however, the one which shows his hostility to Porter. His claim of the authorship of the prosecution, and his claim for reward from the administration for having carried it successfully through, show, as I think, his infinite bias against General Porter. And the map which is attached to that report must now be taken, in view of the facts as they now stand, as a confession of his bewilderment or ignorance, to state it in the mildest way, of the transactions of the 29th, when he testified on the former trial. I want to read to you a letter that he wrote in answer to General Porter's appeal, addressed to General Grant, recognizing the fact that General Porter is trying to get a rehearing:

HEADQUARTERS THIRD MILITARY DISTRICT,
Atlanta, Georgia, September 16, 1867.

GENERAL U. S. GRANT, *Washington, D. C.:*

GENERAL: *As I am one of the principal parties concerned in the case of Fitz-John Porter,* and as I learn that he is in Washington City seeking a reopening of his case, on the

ground that he has come into possession of testimony since the close of the war which has an important bearing on the subject, and as I suppose it is not unlikely that a commission may be ordered to examine that testimony, and report upon it, I consider it my duty, as well as my right, respectfully to submit to your attention, or that of any commission that may be ordered, the following remarks, for such consideration as they merit. * * *

I am, general, very respectfully, your obedient servant,

JOHN POPE,
Bvt. Maj. Gen. U. S. A.

Then follows an elaborate argument, a rehash of all the old errors that he committed five years before at the court-martial, which he adhered to then, as he has ever since, with the tenacity of a Bourbon who can learn nothing and forget nothing.

1767 GENERAL POPE'S "BRIEF STATEMENT OF THE CASE."

His brief statement of facts made in 1869 is his next publication, and it is well worthy of a brief inspection. It is at pages 757 and 759 of this record. In the first place it undertakes to state the case against General Porter. It is in answer to another appeal by Porter to the President. In the first place it omits to state any charge or complaint of disobedience of the joint order.

It states this:

McDowell had marched in Porter's rear from Manassas Junction with his corps, but hearing, on reaching the forks of the road at Bethlehem Church, the sounds of a severe battle being fought at Groveton, passed the rear of Porter's corps, and following the road to Sudley Springs, brought his corps in upon the left of our line and immediately pushed forward into action.

Do you suppose that he believed that, unless he saw things through diseased optics? He then sets forth Porter's message to McDowell and King, incorporates that in his brief statement, and in it he omits the vital part of it as it was in his hands, viz:

I am now going to the head of the column to see what is passing and how affairs are going. I will communicate with you.

The whole spirit of this document is hostile. He repeats the old story about the delivery of the 4.30 p. m. order at five o'clock:

The delivery of this order to Porter at five o'clock, at least one and a half hours before sunset, and full two hours before the battle closed for the night, was proved on his trial; but the order was in no respect obeyed, and seems to have produced no effect upon Porter, except that instead of retreating to Manassas, according to his first intention, he only retreated part of the way—far enough to be out of sight of the enemy and out of danger.

Then certainly here is a most enormous statement of "truth" in view of the present facts. At page 760 in the brief statement:

That Porter did precisely what he wrote McDowell and King he intended to do was perfectly well known, of course, to every man in his army corps, and easily proved before the court-martial. It is impossible to believe that any man in this country possessed of the facts can be found so prejudiced as to justify such a transaction, or to ask a modification of the sentence against Porter. It is Porter himself who wrote the charges against himself, and whose own written testimony establishes his crime. It is impossible for any man, especially any military man, to imagine any excuse for, or any satisfactory explanation of, such conduct.

Then, on page 761, he publishes, as of the 29th, an extract from General J. E. B. Stuart's report, which shows that Longstreet was there in force.

In this extract, General Stuart states that before noon he had been informed of Porter's advance along the Manassas Gainesville road.

General Stuart then says:

The prolongation of his (Porter's) line of march would have passed through my position,

which was a very fine one for artillery as well as observation, and struck Longstreet in flank. * * * Immediately upon receipt of that intelligence, Jenkins', Kemper's, and D. R. Jones' brigades, and several pieces of artillery, were ordered to me by General Longstreet, and being placed in position, fronting Bristoe, awaited the enemy's advance.

Upon this General Pope asserts:

It will be observed also, that when Longstreet was duly notified of his danger, and asked to send troops to resist Porter's advance, he sent only three brigades, viz, Jenkins', Kemper's, and D. R. Jones' (all he could spare, as will appear from Jackson's report), *and this was positively all the force ever in front of Fitz-John Porter from first to last*, placed there with no purpose whatever to attack, but, if possible, to prevent his

Rather remarkable, in view of the clear proof of Wilcox's three brigades being transferred in addition, to withstand Porter. He 1768 publishes in this same brief statement an extract from Longstreet's report, which omits, however, a very important part of that report, cutting out a preceding sentence and giving the sentence immediately following that which would have set forth somewhat more, as other people understand it, and as it is now known, the history of the movements of that day. He left out this (showing Longstreet's presence and line of battle):

EARLY ON THE 29th (*August*), *the columns were united, and the advance to join General Jackson resumed.*

* * * * * * *

On approaching the field, some of Brigadier-General Hood's batteries were ordered into position, and his DIVISION WAS DEPLOYED ON RIGHT AND LEFT OF THE *turnpike, at right angles with it, and supported by Brigadier Evans' brigade.*

Three brigades, under General Wilcox, were thrown forward to the support of the left, and three others, under General Kemper, to the support of the right of these commands. General D. R. Jones' division was placed upon the Manassas Gap Railroad, to the right, and in echelon with regard to the three last brigades.

Having omitted these important sentences, General Pope proceeds to quote the subsequent portion thus:

* * * At a late hour in the day Major-General Stewart reported the approach of the enemy in heavy columns against my extreme right. *I withdrew General Wilcox, with his three brigades, from the left,* and placed his command in position to support Jones in case of an attack against my right. *After some few shots the enemy withdrew his forces,* moving them around towards his front, and about four o'clock in the afternoon began to press forward against General Jackson's position. *Wilcox's brigades were moved back to their former position.*

Then General Pope, assuming that General Wilcox's division of three brigades were the same as the three brigades mentioned by Stuart in the passage quoted from him (which they were not), and ignoring the fact that Jones, upon the right, was in command of a division, and that Kemper with his division was there also, and the fact that Wilcox and Hood, if needed, were within easy reach, exclaims:

It seems, then, that as soon as Porter retreated towards Manassas from this *overwhelming* force, *Longstreet immediately withdrew these brigades, and, joining Jackson's right, immediately pressed forward with them against that portion of our army concerning whose defeat Porter expressed such doleful apprehensions in his letter to McDowell.*

Then he incorporates what he got from McDowell, that extract from Jackson's report of the 30th, making it of the 29th, turning Porter's own guns against himself, and charging him with lying inactive at Dawkins' Branch all that day, although in full hearing of a great battle, that is to say, of Porter's own memorable attack of the 30th, which so nearly ovetwhelmed the rebel army of Jackson, until Longstreet came in obedience to his urgent call for re-enforcements. Here is an extract or statement of "truth" as of the 29th:

But Lee, according to the testimony of the chief engineer on his staff, *took breakfast that morning (i. e., the 29th) on the opposite side of Thoroughfare Gap, full thirty miles distant, and it was utterly impossible to re-enforce Jackson before a very late hour of night, long before which time the whole affair would have been ended.*

This taking breakfast on the opposite side of Thoroughfare Gap, full thirty miles distant, is one of the most astonishing statements that I have ever heard. Thoroughfare Gap is about six miles from Gainesville. There is a map published in connection with his report to the Committee on the Conduct of the War which seems to have some bearing on this statement of General Lee's taking breakfast on the other side of Thoroughfare Gap, fully thirty miles from Gainesville; a very singular thing, which ought to be explained by somebody. *Here* is Thoroughfare Gap; this is Centreville; and this map reverses the true positions of the gaps, and puts Thoroughfare Gap where Manassas Gap should be, thirty miles to the west. That is one of the maps made and
1769 annexed to General Pope's report to the Committee on the Conduct of the War. It is very strange that a man should read history wrong and geography wrong too. I cannot understand it. It seems to me that must be an accident. Of course General Pope must have known, as well as General McDowell, that the statement in Jackson's report, incorporated in his "brief statement" to refer to the 29th, did in fact refer to the 30th, and to Porter's glorious conduct on that day. Yet he insisted, and by-and-by I will show you that he insists to this day, that that is right. But General McDowell, when brought face to face with his error, conceded that he was wrong. General Pope not only still insists upon it that it is right, but still insists that it is no business of his to correct it if it is not right.

GENERAL POPE'S EXPLANATORY LETTER OR BRIEF STATEMENT.

Now I come to his letter of October 23, 1878, showing why he put out the brief statement. This is worthy of attention in considering whether he is an unbiased person in speaking of General Porter. It seems that some question had been made and it came to his ears, about these extracts, and he publishes them again in a letter to General Sherman dated October 23, 1878. He says:

Although General McDowell states in his testimony before the Board now in session in Porter's case that he made this extract and sent printed slips to me, I still think it proper fully to explain my connection with its subsequent use in the paper (brief statement) above referred to, and my authority for using it.

Then he states how he got it from the War Department and got it verified. But we know what that meant; that it was a verified extract from the book, but the extract which was verified, not giving the date, the date was put on by somebody else, viz, General McDowell.

Having thus called attention in the statement itself to Porter's assertion that the extract from Jackson's report referred to the 30th and not the 29th of August, 1862, and given my authority for using it, *and my belief that Porter was mistaken*, and an additional statement that the case was complete without considering the extract from Jackson's report; so that it was and is, practically out of consideration. *I supposed, and still suppose, that I did everything demanded by fairness and justice.*

The "Brief statement," with the above note inserted at the bottom of it, was then filed in the War Department, and copies were furnished Colonel Schriver, General Townsend, and others, so that the note at the bottom has been known to them for eight years past, *and neither of these officers has ever suggested to me even that there was any mistake about them. The opinion of Colonel Smith and the assertion of General Porter are, therefore, left to be balanced against the certificate of General Townsend and the letter of Colonel Schriver, and whatever the facts may ultimately prove to be, I do not see what I have to do with it.*

But how are these mistakes of history to be corrected if the two men

who got up that circular say when they are brought face to face with the glaring error, the one that "he does not think that it is his province to correct it," and the other that "he does not see what he has to do with it"? There is one singular fact in this letter which bears rather hardly upon General McDowell, as showing how unnecessary it was for General McDowell to come here and say that he furnished these statements to General Pope, when he procured them from the War Department in 1869. He says:

It is proper to say that the "Extracts" in question were sent me in 1867 *from Washington, I do not know by whom.*

That was two years before General McDowell went through the supererogatory work of furnishing them to General Pope; he had them already, and had been laying them by for future use against
1770 General Porter. Then he has written various letters to General Belknap and the Comte de Paris, which are in evidence, full of these reassertions of the exploded mistakes against General Porter, and all testifying in the strongest manner to his absolute and undying hostility to Porter; which, as I have said, is also fairly deducible from the oral evidence in this case. There is nothing left adverse to General Porter but this opinion, and you can fairly estimate the weight that is to be given to it.

General Roberts has been cited. He is no longer living; but to show you how much weight is to be given to General Roberts' testimony, he is the author of this false and malicious libel against the Fifth Army Corps, which was contained in the fourth specification of the second charge against General Porter's corps and its commander in respect to the action of the 30th, which General Roberts, as a brigadier-general and inspector-general of General Pope's army, could not but have known all about. That specification is as follows:

Specification 4th. In this: That the said Major-General Fitz-John Porter, on the field of battle of Manassas, *on Saturday, the 30th of August*, 1862, *having received a lawful order from his superior officer and commanding general, Major-General John Pope, to engage the enemy's lines, and to carry a position near their center, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness, and, by delays, give the enemy opportunities to watch and know his movements and to prepare to meet his attack, and did finally so feebly fall upon the enemy's line as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their line, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position and the momentous consequences and disasters of a retreat at so critical a juncture of the day.*

That was too much even for the court-martial. General Roberts stands as the author, with his name subscribed to that statement of Porter's conduct of the 30th, probably about as gallant and determined a fight and series of charges as was ever made by an army corps in the American army or any other army. How can you give any weight to the remnant of his opinion? So I leave that part of the case, stating that, against the solid facts that we have proved, it seems to me you can attach no value whatever to these opinions.

THE ANIMUS OF GENERAL PORTER.

Finally, a few words as to the *animus* of General Porter. On the present solid facts, this charge of evil *animus* seems to me to be not the least material. It never was resorted to even by Judge-Advocate-General Holt, except to throw in as a make-weight to determine the scales, which he thought were, upon the evidence, doubtful. But now it is apparent

to all the world, and no longer doubtful, that Porter did his whole duty, no matter what his estimate of General Pope might have been. If his feelings were such as General Burnside testified to, that he entertained, in common with all the officers of the army, or a great part of them, namely, a distrust of General Pope's ability to conduct a great campaign, and yet, notwithstanding that, he did his whole duty, the performance of his whole duty is all the more meritorious, is it not? But what was General Porter's *animus?* I shall not consume the time of the Board in developing all that is shown by the dispatches and telegrams of Porter, from the time of starting from Harrison's Landing, from the time that he first knew that he was to co-operate with and finally to join the army of Pope in Virginia. There is everything in those dispatches which is to his credit—sleepless vigilance, untiring activity, implicit obedience as an officer, evidenced by all the dispatches, by all the telegrams, by all the orders. I will not consume the time of the Board in doing
1771 it, but I would like the Board to take these telegrams, these dispatches, covering the movements all the way from Harrison's Landing up to the 26th of August, where his telegrams are first called in question as offensive. They show that he did all that could become a gallant and brave general, as in all our previous history where he was concerned he had done. They do not indicate anywhere any hostility to Pope, or any purpose not to do his duty. They testify all the time that he was doing his duty to the utmost.

What were the relations in which he stood in sending these telegrams? To whom were they addressed? Were they telegrams for publication? Not at all. Were they orders to subordinates? Not at all. Were they for the public eye? Not at all. But General Burnside had requested him to keep him informed, as a means of communication with the President, of what was going on. Now, I challenge the doctrine of the prosecution in this case as to the relative attitude of corps commanders. I deny that they are not at liberty to criticise the movements of their superior general, to a superior or to the supreme source of all military authority. I agree that they must not criticise to subordinates; that they must not criticise in the public ear; that they must not so speak as to create disaffection. But has it ever been known, in any country, that subordinate generals might not send criticisms to headquarters, even upon the conduct of a campaign by their immediate commander? In what army has it not been done? In what country has it not been permitted? Why, the theory of the infallibility of the Pope, to question which is heresy, is now for the first time sought to be applied to military matters—they set up the infallibity of this Pope, and that all questioning of it is treason. That will not do. Even Napoleon, in the zenith of his glory, allowed criticisms upon himself, and of superior generals by those under them. It is a n w theory in this free country, that because a man happens to be a major-general and a corps commander, he is tongue-tied, that he has lost all freedom of thought, all freedom of speech. A pretty good specimen of what a co-ordinate, if not a subordinate, commander can do in the way of criticism of a commanding general appears in General Pope's criticism to President Lincoln about General McClellan, which is contained in his report to the Committee on the Conduct of the War, at page 105; and as his authority will not be questioned here, I would like to read that. He says:

> In face of the extraordinary difficulties which existed, and the terrible responsibility about to be thrown upon me, I considered it my duty to state plainly to the President that I felt too much distrust of General McClellan to risk the destruction of my army, if it were left in his power, under any circumstances, to exhibit the feebleness and irresolution which had hitherto characterized his operations.

Well, I think that is a pretty good sample of the kind of criticism which is allowable. It seems to me that it is necessary to allow criticisms, for the safety of the army. Suppose that, instead of a great master of the art of war like General Pope, a great army had an incompetent commander, with skillful generals under him, the whole army might be destroyed if you take from them that power of criticism. Now, I undertake to say that Porter's allusions in these telegrams are all true, all perfectly justifiable; although the discreetness of sending them or making some of those remarks, knowing what General Pope is, might possibly be questioned. I have stated his relations to Burnside, and the object of sending the telegrams. It is true that Pope's whole campaign is not in review here; but something is in view which is referred to in these telegrams, and that much I must bring to the attention
of the board. It appears that General Pope took command in
1772 the summer, I think it was June or July of 1862, and began the formation of this Army of Virginia. He came from the West and imported new doctrines of military science, which certainly startled, if they did not shake, the confidence of all military men in the East; and as these telegrams of Porter, so much objected to, refer expressly to these new theories of war, I desire to bring the new theories of war once more to the attention of the Board. I refer to his famous introductory order of July 14, on page 278 of the Board Record. If such an order cannot be criticised, then General Porter was wrong in criticising it; if it cannot be ridiculed, it was wrong for General Porter to laugh at it. But I shall insist that even a military saint, if there be such a person, could not help laughing at it. This was the order which was proclaimed, not only to his own army, but to the rebel army, when he assumed command of the Army of Virginia:

WASHINGTON, *Monday, July* 14.

To the officers and soldiers of the Army of Virginia:

By the special assignment of the President of the United States, I have assumed command of this army. I have spent two weeks in learning your whereabouts, your condition and your wants, in preparing you for active operations, and in placing you in positions from which you can act promptly and to the purpose.

I have come to you from the West, where we have always seen the backs of our enemies, from an army whose business it has been to seek the adversary, and to beat him when found; whose policy has been attack and not defense. In but one instance has the enemy been able to place our western armies in a defensive attitude. I presume that I have been called here to pursue the same system and to lead you against the enemy. It is my purpose to do so, and that speedily. I am sure you long for an opportunity to win the distinction you are capable of achieving; that opportunity I shall endeavor to give you. Meantime I desire you to dismiss from your minds certain phrases which I am sorry to find in vogue amongst you. I hear constantly of taking strong positions and holding them—

As Porter did on the 29th—

of lines of retreat and of bases of supplies. Let us discard such ideas.

There, I think, you see the source of his condemnation of Porter's acts of the 29th.

The strongest position a soldier should desire to occupy is one from which he can most easily advance against the enemy. Let us study the probable lines of retreat of our opponents, and leave our own to take care of themselves. Let us look before us and not behind. Success and glory are in the advance. Disaster and shame lurk in the rear.

Let us act on this understanding, and it is safe to predict that your banners shall be inscribed with many a glorious deed, and that your names will be dear to your countrymen forever.

JOHN POPE,
Major-General Commanding.

This was a public proclamation, made on the 14th of July. It was not only proclaimed to his own army, but to the army opposed to him. What did it promise them? It gave them an understanding of how he was going to act; it assured the enemy that there should be no more such conduct on the part of the Federal army as taking strong positions and holding them; that they would not preserve any lines of retreat, or maintain any bases of supplies; the only strong position he would look for would be the one from which he could most easily advance upon the enemy, by which, I understand, he means to be always upon the road; that he would always leave his own lines of retreat to take care of themselves; that he would never look behind him, because disaster and shame lurked in the rear. That is his proclamation. Was it merely for the purpose of buncombe, or was he going to act on this understanding? On that we have some light thrown in his report to the Committee on the Conduct of the War, which shows, as it seems to me, that
1773 it was a genuine thing—a deliberate method of warfare—because eight days previous he had been examined as a witness by Mr. Covode, before the Committee on the Conduct of the War, at Washington, and when asked how he proposed to fight, he said:

At the same time I shall be in such a position that, in case the enemy advance in considerable force towards Washington, I shall be able to concentrate all my forces for the defense of this place, which I propose to defend, not by standing on the defensive at all, or confronting the enemy and intrenching myself, but I *propose to do it by laying off on his flanks, and attack him from the moment he crosses the Rappahannock, day and night, until his forces are destroyed, or mine.*

By Mr. ODELL:

Q. Is it your design to act on the defensive alone?—A. *Not at all.*

Q. So that you mean to attack?—A. *I mean to attack them at all times that I can get an opportunity.* If I were to confront them with the force that I have, and go building intrenchments, &c., they could flank me on either side, and force me back without my being able to offer any resistance of any consequence. There is a possibility that they may send a large force this way, if the command of General McClellan be in a perilous condition, or where it can be held by an inconsiderable force, and prevented from coming out. They may do that, but I do not think it very likely that they will attempt to move on this place just now. But if they should come this way with a very large force, it seems to me that the only sort of defense of Washington I can afford, with the force I have, is *to lie off on the flanks of their army, and attack them day and night, at unexpected times and places, so as to prevent them from advancing. It will be hard work, but I do not see anything else so likely to prevail against them.*

By Mr. COVODE:

Q. Would you not, in all these movements, feel embarrassed with the knowledge that while you are moving forward on the enemy, you are looked upon as the protector of the capital here?—A. No, sir; for I am fully convinced I am doing the best I know to effect that object. *It is not necessary, in my opinion, in order to protect the capital, that I should interpose myself between the enemy and the place itself; in fact, it would be the very worst policy to do so now,* for wherever I could put myself, they could place themselves between me and the capital, by attacking my flanks. *By laying off on their flanks, if they should have only forty thousand or fifty thousand men, I could whip them.* If they should have seventy thousand or eighty thousand men, I would attack their flanks and force them, in order to get rid of me, *to follow me out into the mountain, which would be what you would want, I should suppose.* They could not march on Washington, *with me lying* with such a force as that on their flanks. I should feel perfectly satisfied that I was doing the best I could with my force to dispose of them in that way.

These declarations had been already made and published when he took command of the Army, and it is the reference to this sort of thing in these dispatches of Porter's that has been so much complained of. We do not see the whole of this campaign, but we have certain glimpses of it which show that he acted upon this understanding and view of the art of war, and provoked the criticism, not only of General Porter, but of all soldiers. I invite your attention to the position at 7 p. m., on the

26th of August, to see how it was that Jackson got in behind him while he was "looking before and not behind." Pope's dispatch is contained in Porter's statement, at page 86, and it shows where these forces of his were posted. It is a dispatch from Warrenton Junction, August 26, 7 p. m., to General Porter:

> Please move forward with Sykes' division to-morrow morning, through Fayetteville, to a point within two and a half miles of the town of Warrenton, and take position where you can easily move to the front, with your right resting on the railroad. Call up Morell to join you as speedily as possible, leaving only small cavalry forces to watch the fords. If there are any troops below, coming up, they should come up rapidly, leaving only a small rear guard at Rappahannock Station. You will find General Banks at Fayetteville. I append below the position of our forces, as also those of the enemy. I do not see how a general engagement can be postponed more than a day or two.
>
> 1774 McDowell with his own corps, Sigel's, and three brigades of Reynolds' men, being about thirty-four thousand, are at and immediately in front of Warrenton; Reno joins him on his right and rear, with eight thousand men, at an early hour to-morrow; Cox, with seven thousand men, will move forward to join him in the afternoon of to-morrow; Banks, with six thousand, is at Fayetteville; Sturgis, about eight thousand strong, will move forward by day after to-morrow.

There they were at 7 o'clock p. m. on the 26th of August, facing towards the Rappahannock, facing the enemy. At 12 o'clock that night, in a dispatch from General Pope to McDowell in his official report, at page 234, we have this extraordinary state of things growing out of this policy of "looking before" and not "behind," and letting his lines of communications "take care of themselves." Jackson had, in fact, got through Thoroughfare Gap on the 26th, in the morning. That appears in Jackson's report, printed in the Board Record, at page 522. He had gone perhaps twenty miles and struck, and Pope knew nothing of it until he was informed by report next morning, when his whole army was still "looking before" across the Rappahannock; and Jackson, twenty-four hours previous, had slipped in behind him. This is dated August 26, 1862, at midnight, just at the very moment, as I understand, that Jackson was striking in his rear upon the railroad, between him and Washington:

> General Sigel reports the enemy's rear guard at Orleans, to-night, with his main force encamped at White Plains. You will please ascertain very early in the morning whether this is so, and have the whole of your command ready; you had best ascertain to-night, if you possibly can. Whether his whole force, or the larger part of it, has gone around, is a question which we must settle instantly, and no portion of his force must march opposite to us to-night without our knowing it. I telegraphed you an hour ago what disposition I had made, supposing the advance through Thoroughfare Gap to be a column of not more than ten or fifteen thousand men. If his whole force, or the larger part of it, has gone, we must know it at once. The troops here have no artillery; and if the main forces of the enemy are still opposite to you, you must send forward to Greenwich, to be there to-morrow evening, with two batteries of artillery, or three if you can get them, to meet Kearney. We must know at a very early hour in the morning, so as to determine our plans.
>
> JNO. POPE, *Major-General.*

Now, there is an illustration of leaving lines of retreat to take care of themselves, and emphatic proof that disaster and shame lurked in the rear of this very movement. Stuart struck at Catlett's Station on the night of the 26th, throwing everything into confusion, and at daybreak of the 27th Jackson's force captured Manassas, the base of supplies, destroying an immense quantity of stores upon which the sustenance of Pope's army depended, and actually cutting off that army from communication with the capital, which he was defending by "laying off on the flanks of the enemy." This appears by Stuart's report in the Board Record, at page 525; and Trimble, who was in that affair, puts it at 12.30 a. m. on the night of the 26th and morning of the 27th. There was an

illustration of the practical working of his plan of "looking before" and not "behind"—of letting his lines of retreat and communication take care of themselves and of not caring anything about his bases of supplies. Then you have the illustration of the pursuit of Jackson to Centreville when Jackson was not at Centreville, and had not been there. Reno and Heintzelman were ordered to Centreville on the 28th and Porter on the 29th. There was an instance of studying the *probable* lines of retreat of the enemy. I claim that all the fighting on the 29th illustrates his method of attacking where he "could get an opportunity to do so," as he swore before Covode's committee that he intended to do; and his insisting that the enemy were running away on the 30th, and attacking them as if they were, is a specimen of his policy of attacking
1775 under all circumstances and never standing on the defensive.

Let me read you the evidence of General Patrick on the subject, at page 193, for it shows that this theory of attacking under all circumstances was carried out to the full. General Patrick found the enemy very speedily on that morning and the night previous.

I reported the condition of affairs, as they had been during the night and as they then appeared, that the enemy had come down the road here about where they lay during the night [north of Young's Branch], and that they had withdrawn to within the woods here [near Groveton]. My recollection is that it came out farther than that; that is, that it continued nearer toward the pike and made something of an angle here. I reported that the wood was full of rebs.

Q. On both sides of the pike?—A. Yes; but mostly on the south side. I was there twice. I cannot say at which time this occurred. I should think, however, it was the second time I was there. My instructions then were from General McDowell to go back. The conversation was between McDowell, Pope, and myself.

Q. You had better state it as it was.—A. Well, I cannot give the words.

Q. No; the substance.—A. The substance of it was, "You are mistaken. There is nobody in there of any consequence. They are merely stragglers." I gave the reasons, and I supposed, I believed, that there were heavy bodies in that wood; the fact that this column had come down in that way and must have fallen back in that direction, because otherwise Reynolds would have interfered with them. The direction was to go back and feel of them—put in my skirmishers on both sides of the road and see what there was there. As I got there some of Sigel's scouts, mounted, were there; they went in, and before getting up to the wood anywhere from the edge of the wood there was a pretty strong fire from what would seem to be a skirmish line poured out upon them, and they came riding back very hastily, and I remarked, "It was as I told you; the woods are full." In the mean time I was getting out the skirmishers to go forward, and I went up again to McDowell and Pope and reported this. I cannot say to which it was; they were both together, and one of them replied, "O, these Dutchmen are always seeing the enemy," referring to these scouts. "Now get off and get some coffee, and you will feel better natured, and then go back and throw out your skirmishers and pursue them with your whole command, for we can't afford to let them escape. We have got to bag them."

Q. Who said that?—A. They both used the expression, but McDowell was the one who used it especially to me.

Q. Did you make any reply?—A. I think I asked him, "Which side of the bag will it be?"

And in fact it proved to be the wrong side of the bag.

Was not that an instance of attack, because he would never assume a defensive policy? Well, now, with these glimpses of the method of the campaign, let us come to these telegrams that are so much complained of. At page 84 appears a telegram of August 25. It will be remembered that at that time General Porter was under General McClellan's direction. He telegraphs to Burnside, giving a full account of all that transpired; he was then in the advance proceeding up from the Rappahannock.

To General BURNSIDE: Have you received my dispatches indicating my movements to-morrow? You know that Rappahannock Station is under fire from opposite hills, and the houses were destroyed by Pope. I do not like to direct the movements on such uncertain data as that furnished by General Halleck. I *know he is misinformed of the*

location of some of the corps mentioned in his dispatches. Reno has not been at Kelly's for three days, and there is only a picket at Rappahannock Station; and Kearney, not Banks, is at Bealeton. Reno and Reynolds are beyond my reach. I have directed Sykes to go to Rappahannock Station at five to-morrow, and will go there myself via Kelly's Ford. *Does General McClellan approve?*

Now, what harm is there in that? McClellan was his superior commander. Was it wrong for him to seek to have the approval of General McClellan? The next telegram that they complain of is that
1776 of August 27, when General Porter had, as we claim, voluntarily joined General Pope, and made himself a part of his army. But whether voluntarily or not, it was the disconnecting from one army and attaching to another; and the thing complained of is, that he asked General Burnside to inform General McClellan that he had done it; that he might know that he was doing right. He did not ask for any advice from McClellan; he had no communication from or with McClellan; and it seems to me that, as a wise soldier, he informed General McClellan, so that he, Porter, might know that McClellan was informed that he was with Pope, and looking no further to McClellan for orders. Is not that the fair construction of this dispatch? Let me read it:

From ADVANCE, 11.45 *p. m.*, *August* 26. Received August 27, 1862.

Major-General BURNSIDE: Have just received orders from General Pope to move Sykes to-morrow to within two miles of Warrenton, and to call up Morell to same point, leaving the fords guarded by the cavalry.

You see the vigilance which all these telegrams display, notwithstanding they contain these objectionable passages.

He says the troops in rear should be brought up as rapidly as possible leaving only a small rear guard at Rappahannock Station; and that he cannot see how a general engagement can be put off more than a day or two. I shall move up as ordered, but the want of grain and the necessity of receiving a supply of subsistence will cause some delay. *Please hasten back the wagons sent down, and inform McClellan, that I may know I am doing right.*

Now, what harm there is in a commander of a corps departing from one army and coming, whether by orders from Washington or by his own voluntary act, to constitute a part of a co-operating army, sending back word that he had done so for the information of his former commander, nobody has yet undertaken to explain. They said it was looking to McClellan. Well, were not those circumstances under which it was proper for him to look to McClellan for the purpose I have indicated?

The next complaint is in regard to a telegram of August 27, from Warrenton Junction. Now we are coming to the time when General Porter, having a clearer insight as to what was going on, and of the method in which the campaign was being conducted, could not help expressing his natural instincts, as it seems to me, as a soldier, and he indulged in a little criticism upon the performances which were so startling and so different from the theories of war upon which, I suppose, he had been educated. At page 88 of the statement this dispatch inclosed an order from General Pope, which I will presently refer to; but this is what is complained of:

WARRENTON, 27TH—p. m.

To General BURNSIDE: Morell left his medicine, ammunition, and baggage at Kelley's Ford; can you have it hauled to Fredericksburg and stored?

General Porter was looking all this time to General Burnside for supplies:

His wagons were all sent to you for grain and ammunition. I have sent back to you every man of the First and Sixth New York Cavalry, except what has been sent

to Gainesville. I will get them to you after a while. *Everything here is at sixes and sevens, and I find I am to take care of myself in every respect.* OUR LINE OF COMMUNICATION HAS TAKEN CARE OF ITSELF, IN COMPLIANCE WITH ORDERS. The army has not three days' provisions. The enemy captured all Pope's and other clothing; *and from McDowell the same, including liquors.*

Now, what does he refer to there? Is it not absolutely true? What had happened? Jackson had got in behind Pope while Pope was
1777 looking out for him at the front, and while disaster and shame were thus lurking in the rear; there they were, Stuart at Catlett's Station, in the shape of disaster, and Jackson, as shame, at Manassas. Everything *was* at "sixes and sevens." Had not the commanding general proclaimed that he was going to act on the understanding that lines of communication and retreat should take care of themselves, that he would not take care of them, and that his subordinate commanders should not take care of them? This was one of the results of his novel policy. Was it criminal? Was it more than human for General Porter, in writing to General Burnside, with whom his communication was lawful—communicating, if you please, with the President, who was the superior of Pope—to indulge in this irresistible and spontaneous criticism upon the results of this novel method of warfare, which had here for the first time been inaugurated and so forcibly illustrated? You observe General Pope's very words in his proclamation are the words that Porter uses in this dispatch.

The next one that they complain of is that of August 27, 4 p. m., on page 89 of the statement:

I send you the last order from General Pope, which indicates the future as well as the present. Wagons are rolling along rapidly to the rear, as if a mighty power was propelling them. I see no cause of alarm, though this may cause it.

That referred to the wagons by the thousand that were pouring on towards Alexandria, rolling night and day over those roads, especially that road from Warrenton Junction to Bristoe, which we have so carefully examined. Had he any authority for the statement? This order from General Pope, which it transmitted, contained the very facts upon which he was commenting. Let me read it. Here is the order from General Pope, directing the flight of all wagons and of all trains towards Alexandria:

HEADQUARTERS OF ARMY OF VIRGINIA,
Warrenton Junction, August 27th, 1862.

* * * * * * *

Major-General Banks, as soon as he arrives at Warrenton Junction, will assume the charge of the trains, and cover their movement towards Manassas Junction. The train of his own corps, under escort of two regiments of infantry and a battery of artillery, will pursue the road south of the railroad, which conducts into the rear of Manassas Junction. As soon as the trains have passed Warrenton Junction he will take post behind Cedar Run, covering the fords and bridges of that stream, and holding the position as long as possible. He will cause all the railroad trains to be loaded with the public and private stores now here, and run them back towards Manassas Junction as far as the railroad is practicable. Wherever a bridge is burned, so as to impede the further passage of the railroad trains, he will assemble them all as near together as possible, and protect them with his command until the bridges are rebuilt. If the enemy is too strong before him, before the bridges can be repaired, he will be careful to destroy entirely the train, locomotives, and stores, before he falls back in the direction of Manassas Junction.

This was an order for a precipitate and universal flight in the direction of Alexandria of all wagon trains. It was the execution of that order that blocked up the road on the night of the 27th, so that General Porter, up to three o'clock, could not move. Now, was it a serious or wicked criticism for General Porter, writing as he was this message to Burnside, to say:

Wagons are rolling along rapidly to the rear as if a mighty power was propelling them. I see no cause of alarm, though this may cause it.

This, also, is seriously complained of in the same telegram:

I found a vast difference between these troops and ours; but I suppose they were new, as to-day they burned their clothes, &c., when there was not the least cause.
1778 I hear that they are much demoralized, and needed some good troops to give them heart and, I think, head. We are working now to get behind Bull Run, and I presume will be there in a few days, if strategy don't use us up.

How true that was! How prophetic! Strategy did use them up, and those that were not used up did upon the night of the 30th quietly withdraw behind Bull Run and take their places in safety on the heights of Centreville.

The strategy is magnificent, and tactics in the inverse proportion. I would like some of my ambulances. I would like also to be ordered to return to Fredericksburg, to push toward Hanover, or, with a larger force, to push towards Orange Court-House.

Now, what does that mean? A suggestion of what I have heard military men say was, even in the then wretched situation, a wise expedient. What was it? To strike behind Lee, at his lines of communication, and compel his instantaneous retreat. If that had been done, all this useless slaughter of the 29th and 30th would have been avoided. That was Porter's suggestion, of which they complained. That was his idea of getting away and doing something; of dealing an effectual blow at the enemy, with whom they were all contending.

I do not doubt the enemy have a large amount of supplies provided for them, and I believe they have a contempt for the Army of Virginia.

Do you not believe it? What else but such a sentiment could have inspired Jackson to make that dash through Thoroughfare Gap, and put himself in the trap in which he did put himself, surrounded by the Army of Virginia? Facts are to be looked at in analyzing this case, now that the passions of the war are over. Is it not true? What but that very sentiment could have brought Jackson in there? Will any military man say that if he had not entertained such a sentiment he would have dared to do so? He had read Pope's proclamation—to him a proclamation as well as to Pope's own army—which notified him that Pope was not going to look behind him, nor at his base of supplies; that he was to look before and not behind, because disaster and shame lurked in the rear. He knew that there was a great supply depot at Manassas, and in he went, in obedience to General Pope's invitation, and destroyed it utterly.

I wish myself away from it, with all our old Army of the Potomac, and so do our companions.

What does that mean? Has he not suggested what he meant, that he would like to be ordered to make a strike in Lee's rear?

I would like also to be ordered to return to Fredericksburg, to push towards Hanover, or, with a larger force, to push towards Orange Court-House. I wish Sumner was at Washington, and up near the Monocacy, with good batteries. I do not doubt the enemy have a large amount of supplies provided for them, and I believe they have a contempt for the Army of Virginia. I wish myself away from it, with all our old Army of the Potomac, and so do our companions. I was informed to-day by the best authority that, in opposition to General Pope's views, this army was pushed out to save the Army of the Potomac, an army that could take care of itself. Pope says he long since wanted to go behind the Occoquan. I am in great need of the ambulances, and the officers need medicines, which, for want of transportation, were left behind. I hear many of the sick of our corps are in the houses by the road—very sick, I think. There is no fear of an enemy crossing the Rappahannock. The cavalry are all in the advance of the rebel army. At Kelly's and Barnett's Fords much property was left, in consequence of the wagons going down for grain, &c. If you can push up the grain

to-night, please do so, direct to this place. There is no grain here or anywhere, and this army is wretchedly supplied in that line. Pope says he never could get enough. Most of this is private, but if you can get me away, please do so.

What does he refer to? Has he not stated what it referred to? Has he not laid out principles of counter-attack, which, if acted upon, would have avoided the partial destruction of this army?

1779 Well, what is the next that is complained of? It is the dispatch of August 28, 9.30 a. m., at Bristoe.

I hope all goes well near Washington.

Now, McClellan was back, near Washington.

I think there need be no cause of fear for us. I feel as if on my own way now, and thus far have kept my command and trains well up. More supplies than I supposed on hand have been brought, but none to spare, and we must make connection soon. I hope for the best, and my lucky star is always up about my birthday, the 31st, and hope Mc's is up also. You will hear of us soon by way of Alexandria.

That is complained of as a very contemptuous reference to the movements of the army. "You will hear of us soon by way of Alexandria." I want, in that connection, to read to you a passage from General Pope's report to the Committee on the Conduct of the War, at page 172, containing, as it seems to me, a passage bearing on this. Three years afterwards, when his passions were somewhat cooled, and he had got over the excitement of the campaign, at least, he makes this confession, giving an account of this campaign of the Army of Virginia:

At no time could I have hoped to fight a successful battle with the immensely superior force of the army which confronted me, and which was able at any time to outflank me, and bear my little army to the dust.

Is not that an extraordinary statement after all the boasting proclamations of the campaign? This is a cool statement of fact three years afterwards. Of course, he knew, and everybody knew, that he might be looked for, as is here stated by Porter, and as the fact turns out, by way of Alexandria. What else could possibly be hoped for in the situation, as it was on the morning of the 28th? Then they complain of this:

All that talk about bagging Jackson, &c., was bosh.

Well, it had so turned out, had it not?

That enormous gap—Manassas—was left open and the enemy jumped through; and the story of McDowell having cut off Longstreet had no good foundation. The enemy have destroyed all our bridges, burnt trains, &c., and made this army rush back to look at its line of communication, and find us bare of subsistence. We are far from Alexandria, considering the means of transportation. Your supply train of forty wagons is here, but I can't find them. There is a report that Jackson is at Centreville, which you can believe or not.

There is a sneer in that. But is it not justified? This was at Manassas, at 2 p. m. of the 28th. The next morning the raid by Longstreet, who was cut off, took place. It shows that General Porter's sagacity and soldierly instinct led him to see, and foresee, the situation in a clear manner, the information of which, to the government, was of the greatest utility. Again is his dispatch of 6 a. m., on the 29th, at Bristoe:

I shall be off in half an hour. The messenger who brought this says the enemy had been at Centreville, and pickets were found there last night.

Sigel had severe fight last night; took many prisoners; Banks is at Warrenton Junction; McDowell near Gainesville; Heintzelman and Reno at Centreville, where they marched yesterday, and Pope went to Centreville with the last two as a body-guard.

There is the only personal reflection that I can find in these dispatches. It seems to me to be very harmless and innocent.

At the time, not knowing where was the enemy, and when Sigel was fighting within eight miles of him, and in sight. Comment is unnecessary.

The enormous trains are still rolling on, many animals are not being watered for fifty hours; I shall be out of provisions to-morrow night; your train of forty wagons cannot be found.

I hope Mac's at work, and we will soon get ordered out of this. It would seem from proper statements of the enemy that he was wandering around loose; but I expect they know what they are doing, which is more than any one here or anywhere knows.

1780 Is that not true? What had just happened? What was true that morning? What is sworn to by General McDowell as being true during all that campaign from the 12th, when he went to join General Pope, up to the 29th, when this dispatch was written? General McDowell swore before you at Governor's Island that on all these days, from August 12 to August 29, he and General Pope were hunting for each other a good deal. Now, does not that justify this observation, that knowing what other people are doing is "more than any one here knows"? This was written at the very time when McDowell was taking his famous ride, when Pope himself was saying, "I have not been able to find out anything about McDowell for a long time, or until a late hour this morning."

I submit that at this late day, when we look at these things coolly and dispassionately, there was no wickedness, no malice, no evil animus in these dispatches. They were almost irresistibly prompted and called forth by the extraordinary situation; they were confidential to Burnside and the President. General Burnside testified that it never occurred to him that General Porter in writing them had any evil motive or purpose towards General Pope; he only thought that it showed that General Porter felt about the commanding general as everybody else did, a certain distrust in consequence of his new methods of warfare practically carried out. It is stated in the statement, and it may not be improper to repeat it here, that the President thanked General Porter personally for those very telegrams on the battlefield at Antietam, where he met him. Now, we say that if you want to find General Porter's animus in these dispatches you must find it in what he was doing at this time, as evidenced by the dispatches, working to his utmost, night and day, pressing forward with irresistible vigor, as it seems, and with a wise application of what he knew of the rules of war. However he may have felt about General Pope, these very telegrams demonstrate that all the time he did his whole duty. What more is wanted? Did not the authorities at Washington think so? Why was it that the week after they put him in command of 18,000 troops in defense of the fortifications at Washington? Why was it that they left him in command afterwards during the great battle of Antietam, and only checked his course when they were pursuing the enemy after Antietam down towards Fredericksburg? Those are questions that are very hard to answer. I do not wish to discuss this question of animus further. I only want to say that actions, as the Recorder says, speak louder than words, and if you want Porter's animus you must find it in the whole history of his life; you must find it in all his record from the time he left this Academy, all through the war with Mexico, upon the Peninsula, where he achieved great and glorious deeds; you must find it in that day of the 30th; yes, and in this day of the 29th, which is among his proudest, and will stand in history as one of his wisest and best days.

In closing this case, I must refer, by way of general observation, to certain evidence that has been introduced unnecessarily, as it seems to me. The facts nobody can complain of; but when it comes down to small scandals, is it not better to reject them, as Judge-Advocate Holt

rejected them—this evidence of Lord and Ormsby, and their absurd stories of what they say took place in General Porter's quarters in Washington during his trial there? There he was one day in great excitement coming in from the trial. Do you doubt, on what you know now, that he had cause for immense excitement? He is a very cool man, but do you question that his blood must have been up and that all there was in him of indignation and rage was stirred to its utmost depths? They said that they heard him say, "I war'n't loyal
1781. to Pope. I was loyal to McClellan." Well, what was that? Was it addressed to them? No; it was an exclamation, excited and wrathful. What did it mean? Did it not mean simply an outbreak of wrath, that he could not contain, at something that had been said or done at the court-martial that was trying him that day? Instead of being a statement, a proposition, an admission, a confession, as it is claimed, it was a wrathful repudiation of the idea, and is incapable of any other construction. I will not dwell upon that. The Judge-Advocate rejected it. Lord and Ormsby swore each other to secrecy, and then ran and told the Judge-Advocate, and he treated it with the contempt that it deserved. Yet that which could not be used in the days of the heat and passion of war is brought in here to serve a certain purpose, in this era of peace and good will. Then, what do you think of Dr. Faxon's story? Was it necessary to bring in these absurdities? Dr. Faxon, who had heard that there was a charge against General Porter of being dilatory on the march from Warrenton Junction to Bristoe, comes and testifies that as he was marching along with his regiment, going through Bristoe, at two o'clock in the afternoon, he passed where General Porter was standing at his headquarters with some gentlemen, one hundred feet off, and although his regiment did not stop, although they went tramping along on the road, he heard General Porter say to one of his aides that he "didn't care a damn if they didn't get there." But they had got to Bristoe already; it was beyond Bristoe, at two o'clock, where General Porter had arrived at eight in the morning, that this took place. I think that doctor had better have been left in charge of his patients in Massachusetts. Then, what do you think of John Bond? He was sent to carry rations up the Sudley road on the afternoon of the 29th, and he saw a man who somebody told him was General Porter, and General Porter asked him how the battle goes, and he made an explanation of how the battle went. He described General Porter's person, that he had a mustache and no beard, that he had a hat and a major-general's uniform; but it turns out that he had a cap and a full beard, and no major-general's uniform at all. Now, might not John Bond have better been left carrying rations to the end of his days than to have been called here? And Bowers, the scout. The learned Recorder tries to find points of distinction between a scout and a spy. Well, Bowers was at headquarters one day when General Porter was surrounded by his staff. Porter says, "General Pope is coming through this command this afternoon, and I don't want any attention paid to him"—absolutely denied by all the survivors of his staff. Was there ever any more ridiculous stuff than that sought to be imported into a serious controversy? I suppose that all these witnesses are absolutely worthless in every point of view.

And now, if the Board please, enough has been said.

The fate of the petitioner is in your hands. His sufferings under this sentence for the last sixteen years have been peculiar, unlike those that any other general or soldier has ever sustained. I do not propose to depict them; they cannot be exaggerated by any language. Only eminent

soldiers, such as compose this Board, can fully realize and appreciate them. He is not the only person who now stands awaiting your judgment; not only he, but his family and his comrades in arms; that glorious Fifth Army Corps, which never yet met without reaffirming their faith in his innocence; the whole Army, as I believe, and every faithful man who has ever been connected with it, stands expecting and hoping for the restoration of his good name and fame; because, it is not his good name and fame only that is concerned, but the Army's and country's. I believe that this nation is too great, that it
1782 is too magnanimous, to suffer the continuation of such a wrong when once it has been ascertained. If the exigences of those times required that this shame and contumely should be borne by him during all this interval, his patriotism and his loyalty have stood the test. Nobody has ever heard a whisper or a murmur against his country, or its cause, from him. He has always been faithful. He knew, or hoped he knew that time would bring his relief. There were historical instances which would justify the hope. There was the case of brave old Admiral Cochrane, Earl of Dundonald, who suffered a similar but by no means equal ignominy, convicted of a crime of which he was wholly ignorant and innocent, in 1814; and he had to live until 1832 before the brand of infamy was taken from him. But the British nation was magnanimous, and restored him at last to all the honors and titles of which he had been unjustly deprived. If any such indirect purpose as I have referred to made Porter's punishment and humiliation necessary; if he was a sacrifice to discipline, has it not answered its purpose? If it was necessary to strike down an innocent man to enforce discipline upon suspected men in the Army of the Potomac, has it not done its work? Look at them under all commanders, before and certainly afterwards—look at them from Antietam to the last struggles in the Wilderness, under the successive commands of McClellan, Burnside, Hooker, Meade, and Grant. When, anywhere, did a man of them fail to do his whole duty?

We think the time has come at last for this gross wrong to the petitioner to be righted. He has looked for it hopefully and faithfully for the last sixteen years. He has looked for it because he was sure of his innocence, because he had absolute faith in his cause, faith in his country, faith in justice, faith in God. The question now is, whether God and justice and country shall all forsake him. We have no fears. We leave the result confidently with you. It seems to me that the time and place are both propitious for his vindication. In ten days more will be the anniversary of his humiliation. Here, where his military life began, is the place where his star should be restored to its true and native luster, and so in his name, and the name of the brave army corps which he commanded, in the name of the Army which he did his best to honor, in the name of truth insulted, and of justice outraged, we demand for the petitioner full and complete reparation.

FORTY-FIFTH DAY.

WEST POINT, N. Y., *January* 13, 1879.

The Board met pursuant to adjournment, with closed doors.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A. Absent, the Recorder, his attendance not being required.

After some time the Board adjourned to meet at the call of its President.

FORTY-SIXTH DAY.

ARMY BUILDING,
New York, Wednesday, March 12, 1879—11.30 a. m.

The Board met at the call of its President.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A., and the Re-
783 corder; also, Fitz-John Porter, the petitioner, and Messrs. Choate and Maltby, of counsel.

The reading of the minutes of the previous session was omitted.

The PRESIDENT OF THE BOARD said: If the petitioner's counsel or the Recorder have any further business to submit to the Board before the final adjournment of the public sessions, the Board will now receive it.

Mr. MALTBY. Since the adjournment the petitioner has come into possession of some leaves from a dispatch-book, or a book in the nature of a dispatch-book, which belonged to Captain Piatt, who was aid-de-camp to General Pope, who has given his evidence during one of your recesses, which is printed on the record.

In explaining it to us he says that he was not aware of the existence of those dispatches at all; he saw his little child playing with his book; he picked it up and found these leaves in it and brought it to the notice of the petitioner. They are are somewhat important to us as showing how good General Porter's memory is, and that General McDowell's memory, as to certain matters, was not good. We have not brought Captain Piatt this morning, because I was not notified that this was an open meeting, and did not know whether it was proper even for counsel to attend, and did not get the information of it until I came here.

We have, however, in our possession the book from which the leaves were taken which contain those dispatches. One of the dispatches is a fragment; the other seems to be full. Upon the dispatches Captain Piatt has written his certificate that they were taken from the order-book, and upon comparison you can see where they were torn out.

We would like to have these go into evidence and would have produced them before had we known that they were in existence. If the Recorder desires we can have Captain Piatt here at a later hour in the day or at any other session. Here is a letter in explanation which I will show to the Recorder. [Letter handed to the Recorder.]

The RECORDER. It seems to me, that as Captain Piatt resides here in the city and has never been before this Board, only before the counsel and myself on interrogatories, it would be better that Captain Piatt should come here.

I do not attach any importance to these dispatches, because the petitioner in his opening statement on pages 27 and 29 referred to the fact that General McDowell had sent to General Pope that morning of the 29th of August, with reference to the position of his troops, and so forth; and General McDowell in his official report of the 9th of October, 1862, which has been published by Congress as early as 1863, in March, also refers to the same fact.

But one of these dispatches is a fragment, and therefore it will be better and more satisfactory, it seems to me, for Captain Piatt to be here to explain. He may know more about that dispatch.

Mr. MALTBY. If you read his letter you will find all that we know about it.

The PRESIDENT OF THE BOARD. The Board do not regard this as

important. It is merely corroborative evidence on a point in regard to which we have no doubt as to the fact.

Mr. CHOATE. Then it is not worth while to keep the case open for the purpose of putting them in.

Mr. MALTBY. There are some matters between the Recorder and myself upon which there is not a perfect understanding. I think it is a misunderstanding on his part which on showing him parts of the record will be cleared up.

1784 We introduced printed documents at the meeting of the Board in October, and, as I understood it, the duty devolved on us to show the parts of those documents on which we relied, and that we would have those parts printed without encumbering the record with the whole document. I accordingly prepared extracts from various documents and served the Recorder either with a copy of them or with a list of the passages, referring him to the page where they could be found. At West Point I had them with me, but I did not offer them, because, as I understood, the documents were already in the record; and I only turned those over as a matter of convenience to the stenographer (they were mere copies) in order to be printed. Accordingly after my return to the city I sent them to the stenographer on going West, and heard nothing from them until I returned, which was Sunday night.

The Recorder makes some objection to the introduction of those passages. I thought they were covered by the ruling of the Board. He can state his objections.

The RECORDER. Before I do so, permit me to say that I do not want to be understood as making any objection to the introduction of those two little dispatches (one fragmentary) that were just referred to by the counsel. Only I should like, as long as the witness is available, and has been a witness before, that they should be introduced regularly, so that he might be questioned a little upon them.

Just before we went to West Point for the closing arguments in January, I received from the counsel a list of the documents from which he proposed to introduce extracts, viz, a reference to pages and lines.

Mr. MALTBY. A list of the extracts?

The RECORDER. Yes, of the extracts. I was so busy preparing my own closing argument that I had not time to look them up.

When I got there, I presumed that the learned counsel would introduce what he wanted upon the record, as he did in the case of a number of papers that he desired in evidence, on some of which I made comments in argument. When I left West Point it was in the belief that I had seen in the record all that he had concluded to introduce. Afterwards, through the official reporter, I received several papers, among which were some extracts which he desired to be introduced from General Pope's report, which the previous ruling of the Board covered. I only desired certain other portions to be added. But before that was done it was necessary to see the counsel, who has been absent up to yesterday, and let him know, and see if that would be satisfactory.

One of them, however, purports to be extracts from General McDowell's statement before his court of inquiry. Whether that was in the mere list of extracts as to which notice was given——

Mr. MALTBY. Yes; you were furnished with a copy.

The RECORDER. I do not know. The counsel says it was furnished and I accept his statement. It was, of course, only a list, and not the extract written out. The objection that I made was this, viz: that the request to spread on the record this document is inadmissible and improper.

I have never before seen it; it is not authenticated even as a "partial" extract; it was not presented to the Board when opportunity was offered for introduction of documentary evidence.

I presume it is among those items of which my friend gave me notice of intention before the Board assembled at West Point; but as he did not introduce it I concluded he had abandoned the idea, as he was supposed to know best what was needed. Had he, however, presented it, there would have been this insuperable objection, viz, that
1785 as General McDowell was a witness it was not shown to him, or opportunity afforded for any elucidation or explanation by him, or inquiry by me.

The rule in this matter governing all judicial or quasi judicial investigations is so plain and uniform that the counsel will have to be bound by it.

Mr. MALTBY. That is an extract from General McDowell's printed statement which we had in pamphlet form before the Board. It was shown to him and he acknowledged having written it; that was his publication. The Recorder, had he listened more closely to my own argument, would have perceived that I quoted very liberally from that pamphlet; and in fact used nearly the whole of that extract in my argument showing that I did rely upon it when I was at West Point. As I understand it that pamphlet was introduced in evidence during General McDowell's testimony before you. I have not a copy of it here, because I did not know that this was an open Board. I will, however, show it to the Recorder for him to see that it is a correct extract, and he may read the whole pamphlet.

The RECORDER. What the counsel has just mentioned is something new to me. I would be glad to have him point out that part of the record where General McDowell's attention was called to it, because that, I am inclined to think, would govern the Board as to whether it was admissible under the circumstances. I do not, however, find anything of the kind.

I have never seen his address before his court of inquiry. All I ever received was this: I wrote to General McDowell to know if the record of his court of inquiry was printed, and if I could get a copy of it as of the Porter court martial. He said no; but that his aides, while his court of inquiry was progressing, had from day to day copied the official record, and made a true copy for him; and he would send me that which I particularly asked for, namely, the *petitioner's evidence* before that court. He immediately put it in print from his department press, and I furnished printed copies to the counsel from those General McDowell sent. The Board may recollect that that was something which I did not care to have questioned upon when General McDowell was a witness, because it was something that had arisen merely as a result of my position as government counsel.

Mr. MALTBY. The proceedings before that court of inquiry we have never pretended were printed. This statement was handed in printed pamphlet form to his own Board, at the time, submitted by him and endorsed by him.

The PRESIDENT OF THE BOARD. We have had a copy of that printed statement of General McDowell's from the library at West Point. It is published.

The RECORDER. General McDowell might have desired to make some explanation if the matter had been brought to his notice, he being a witness. That is why I speak of the rule which governs. I am

ignorant of what that address was. I believe it to be inadmissible under the rule.

Do I understand the ruling of the Board to be that the extracts offered from General McDowell's address to his court of inquiry in 1863 are received?

The PRESIDENT OF THE BOARD. Yes.

The RECORDER. The counsel used in argument, and subsequently submitted to me to be printed as extracts from reports, certain passages from General Pope's report.

1786 I replied to him, as follows:

Whatever General Pope has reported concerning the battles of the 29th and 30th, or the previous action of petitioner on the night of the 27th, and early morning of the 28th August, 1862, is admissible (against my objection) under the ruling of the Board.

There are several reasons why the accompanying documents are not admissible.

1st. They do not relate to petitioner's conduct or action.

2d. They are but partial extracts.

3d. They were not submitted to the Board before closing arguments for objections of record.

4th. General Pope's report must be taken as a whole as to the operations of the days when petitioner did not do his duty, or not at all, and as the accompanying extracts are not connected with anything petitioner himself did or failed to do, they are not admissible.

Mr. MALTBY. We have no objection to the whole report going in; only that is all we cared about for our case. Those extracts referred to proceedings which appeared (a report of them) in General Porter's dispatches to General Burnside, which were made the subject of comment, and I thought it proper that the source of his information showing how correct it was, should appear. It is a part of the history of the whole case and belongs to the record.

The PRESIDENT OF THE BOARD. That is covered by a former ruling. The Recorder can add such other parts or extracts as may be necessary to make a complete history.

Mr. MALTBY. The Recorder withdraws his objection to the dispatch I offered this morning which is not a fragment—the one which is the most material of the two. I do not care to press the other.

The RECORDER. I do not exactly withdraw my objection, but the counsel have asked that I permit it to go on the record, and I——

The PRESIDENT OF THE BOARD. You yielded to their persuasion.

The RECORDER. Yes; I yielded to their persuasion. However, without having it understood that the dispatches came into their possession in the manner indicated, but just that they are dispatches written by General McDowell, apparently on the morning of the 29th, otherwise I should like to have Captain Piatt here.

NEWLY PRODUCED DISPATCH.

The dispatch admitted is as follows:

I have just seen y'r last order telling Porter to take King. Of course this is but temporary and I have asked Porter to place King on his right that I may have him when you say so.

McDOWELL.

The PRESIDENT OF THE BOARD. Is there any further business to be submitted?

The RECORDER. I have found since the adjournment of the Board,

two or three, or maybe four, Confederate reports in the archives of the War Department, bearing upon the action of the 29th of August. Originally I put in all that were published by the rebel congress in 1864, supposing that they comprised all. These are a few additional ones accidentally discovered. I have handed them to the counsel for their consideration. It may be well for the history of the case to put them in, so that we may have all the official reports on the subject.

The PRESIDENT OF THE BOARD. Do you regard them as of sufficient importance to be attached to the record?

1787 The RECORDER. Yes; merely as a complete history, as we have so many reports already. Though I would not have presented them if the counsel had not asked for other documents.

The PRESIDENT OF THE BOARD. There is no objection to official documents of that kind on either side being added to the record for the purpose of completing the history, if it is not already complete.

Mr. CHOATE. I do not believe there is anything in these that sheds any light upon the subject.

The PRESIDENT OF THE BOARD said: We will, then, close our public sessions, congratulating both counsel and Recorder upon the very complete manner in which they have presented the case in all its bearings.

We will proceed to make up our report, and will submit it to the President without any unnecessary delay.

The room was then cleared for deliberation, and after some time the Board adjourned until to-morrow morning at ten o'clock.

FORTY-SEVENTH DAY.

ARMY BUILDING, NEW YORK,
New York, Thursday, March 13, 1879—10 a. m.

The Board met pursuant to the foregoing orders and adjournment, with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A.; absent, the Recorder, his attendance not being required.

After some time, the Board adjourned until to-morrow morning at ten o'clock.

FORTY-EIGHTH DAY.

ARMY BUILDING, NEW YORK,
Friday, March 14, 1879—10 a. m.

The Board met pursuant to the foregoing orders and adjournment, with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. George W. Getty, U. S. A. Absent, the Recorder, his attendance not being required.

After some time, the Board adjourned until to-morrow morning at ten o'clock.

FORTY-NINTH DAY.

ARMY BUILDING, NEW YORK,
Saturday, March 15, 1879—10 a. m.

The Board met pursuant to the foregoing orders and adjournment, with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A. Absent, the Recorder, his attendance not being required.

After some time, the Board adjourned until Monday morning at 10 o'clock.

1788 FIFTIETH DAY.

ARMY BUILDING, NEW YORK,
Monday, March 17, 1879—10 a. m.

The Board met pursuant to the foregoing orders and adjournment, with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A.; and the Recorder.

Subsequently, his attendance not being required, the Recorder withdrew.

After some time, the Board adjourned until to-morrow morning at 10 o'clock.

FIFTY-FIRST DAY.

ARMY BUILDING, NEW YORK,
Tuesday, March 18, 1879—10 a. m.

The Board met pursuant to the foregoing orders and adjournment, with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A. Absent, the Recorder, his attendance not being required.

The following communications were received and considered:

In the matter of the hearing upon the petition of Fitz-John Porter.

Maj. Gen. JOHN M. SCHOFIELD, *President of the Board:*

DEAR SIR: I have a letter from Mr. Cochran under date of the 14th instant, in which he says, "Major Gardner desires me to inform you that he cannot accept your printed argument in the form rendered; and that if you desire your last explanation of General Porter's dispatches printed, he will publish it as your latest utterance to follow the other."

You will probably recollect that after having closed my argument I gave an explanation of General Porter's dispatches, &c., on the afternoon of August 29, 1862.

When I came to prepare the argument for printing I inserted this explanation on pages 28–41, under the consideration of the joint order, as being the appropriate place for it.

I suppose the Board would themselves prefer having it in such a relation to the remainder of the argument as would be its natural position.

Permit me to add that it is the first time in my experience when any question has been made as to a change in the form or arrangement, or as to an addition to the substance of an argument submitted in writing or printed after the oral discussion had taken place.

Of course, if Major Gardner wishes to answer it by an additional argument it would be his right to file and print his reply But certainly it cannot be very material, except as a matter of arrangement, whether the portion referred to is put last or inserted where I have placed it.

I would respectfully ask that the Board would instruct the Recorder to have the argument printed as I have drawn it.

Very respectfully, your obedient servant,

JOHN C. BULLITT.

PHILADELPHIA, *March* 17, 1879.

THE REPORTER'S OFFICE, 33 PARK ROW,
New York, 18*th March*, 1879.

Maj. Gen. J. M. SCHOFIELD, *President*,
and Members of the Army Board:

GENTLEMEN: I have received this morning from John C. Bullitt, esq., senior counsel for the petitioner (through the reporter), copy of a communication he has addressed you of yesterday's date, and as you have considerately dispensed with my attendance during your deliberations, thus enabling me to attend to my other duties
1789 except as occasion may require relative to matters other than your deliberations on the report you are preparing, it is possibly best that I answer his letter in this form.

All three of the counsel for petitioner were permitted to make closing arguments in his behalf, and two (Messrs. Maltby and Bullitt) preceded me.

A long adjournment, all that was desired, was given for the purpose, and the arguments were made and assumed to express the views of their client. Should it be found that they in any material respect give contrary explanations so as to suit different minds, it will be for you, the reviewing authority, the historian, and the public to discover.

After Mr. Bullitt had concluded his elaborate argument, I asked for a day's adjournment before beginning mine, and when about to deliver it, after over 36 hours' recess, he arose and made an additional argument upon the subject, and in explanation of the petitioner's dispatches, and his (petitioner's) action thereunder, and what he believed *at the time*. It is doubtless in your recollection that while making this addendum argument (which he had a right to make, and which I was very glad he did make), his client assisted him in handing him dispatches, &c. I assume, therefore, that he represented his client, and that the latter is concluded by his utterances. (Board's Record, p. 1429.)

When I came to that part of my argument relative to dispatches, as I had made but rough notes of what the learned counsel had said, I was compelled, so as not to misstate him, to ask through the Board if I stated substantially the facts.

The argument of counsel I endeavored to answer where I thought an answer was needed.

After the Board adjourned, without waiting for the stenographic notes of Mr. Cochran to be written out, Mr. Bullitt, on his return to Philadelphia, wrote out an "addendum" argument, put it in print and sent me a copy, and I presume one to you, and asked me *to substitute it for what he had said.*

This I could not accede to, because I observed several, and in my judgment important, variations.

Had it been a mere interlocutory matter, not affecting the *res gestæ*, as, for example, a disagreement between counsel and myself as to whether a particular paper was actually in evidence, where afterwards counsel would find themselves in error and the paper in such discussions of no value as affecting the case, but merely confusing, could well be omitted or amended.

When Mr. Bullitt began his addendum argument, he asked you to look at the record at particular dispatches as he progressed, and the President of the Board suggested that he should arrange all those dispatches in their order as they (counsel) understood them, and submit them in that form. (Board's Record, p. 1433.)

This Mr. Bullitt has not done; or if he has, I have read no such chronological list. He probably believed that his "addendum" argument, where he set them forth, sufficiently did so.

Mr. Bullitt asks you "to instruct me to have his argument printed as he has drawn it."

His request can only be excused on a presumed ignorance of military procedure.

The President of the United States appointed me Recorder, and under the rules governing Army boards and courts I am responsible primarily to you that the record is correct, and secondly to him.

If a statement appears in the record which was not made or is incorrectly recorded, or was put down when ruled out as inadmissible, your decision would absolutely control my action. For Mr. Bullitt, however, to ask that that which he did not say (before the large audience and representatives of the press who heard him at West Point) should be inserted, or that which he did say withdrawn and something different substituted, is to ask what he evidently was not aware was inadmissible.

I find a great deal in his argument not in the reporter's notes at all. He and his colleagues cannot complain that you have not treated him with the greatest indulgence. You can hear new arguments if you please.

That which I think is fair and just to Mr. Bullitt is this:

The printing has been delayed, awaiting his argument, so that it could be paged and follow Mr. Maltby's.

I propose to send it to the Government Printer at once, as delivered, with his grammatical and verbal corrections.

At the same time, as you desire to hear whatever counsel may have to say, I will print right after his argument all the additions and substitutions which he desired, but as to them will ask your indulgence to make *specific* addendum answer to follow my argument for government.

I had hoped to have placed my closing argument in your hands from the Government Printer, as much care was taken to give references to where the evidence could be found.

Messrs. Bullitt and Choate plead professional engagements as cause for delay in returning to the reporter their corrected manuscript. Had the time taken in
1790 printing at a private press and submitting to you their arguments in pamphlet been given to the Government Printer, where a second printing will be necessary, you would now also have my argument.

The petitioner himself on the 20th February, submitted to me an amended "opening statement," which he requested to have substituted for the one he submitted in book-form last June, and reprinted with corrections in July "for the record."

As his three counsel had full opportunity to say anything he desired in January, and as this amended "opening statement" contains a great deal in the nature of argument and substitutions in answer to my closing argument in January, I declined to accept it, as unprecedented, before the meeting of 12th March. His counsel, then, very properly did not offer it, so that any copies petitioner served on you would, I suggest, not be properly a part of the case. I have not, therefore, read it with care.

I am, gentlemen, very respectfully, your obedient servant.

ASA BIRD GARDNER,
Recorder

ROOMS OF ARMY BOARD, *March* 18, 1879.

Maj. A. B. GARDNER, *Recorder:*

SIR: The Board approve of your suggestion to print the arguments of counsel and your own as originally delivered and recorded by the stenographer, with the correction of such manifest errors as do not involve the substance of what was intended to be said at the time. You will then attach to the record, without printing them as part of the record, their amended arguments as submitted by them in print, and also your own answer to the additions made by them to their original arguments.

The paper submitted by Mr. Bullitt in compliance with the direction of the Board to arrange the dispatches in their proper order, as understood by the counsel, will be printed as part of the record.

The Board desire the remainder of the evidence and the arguments as recorded by the stenographer to be submitted with as little delay as practicable.

You will please notify the counsel of this decision.

Very respectfully, your obedient servant,

J. M. SCHOFIELD,
Major-General, President.

The Board then continued its deliberations, and adjourned at 2 p. m. to meet to-morrow morning at 10 o'clock.

FIFTY-SECOND DAY.

ARMY BUILDINGS,
New York, March 19, 1879—10 *a. m.*

The Board met pursuant to the foregoing orders and adjournmen t with closed doors, for deliberation.

Present, Maj. Gen. John M. Schofield, U. S. A.; Brig. Gen. A. H. Terry, U. S. A.; Col. Geo. W. Getty, U. S. A.; and the Recorder.

Ths Recorder acknowledged receipt of the Board's communication of yesterday in reference to the arguments, and remarked substantially that the paper submitted by the learned counsel (Mr. Bullitt), which was directed by the Board in that communication to be printed, was what the counsel asked him to have *substituted* for that portion of his argument of 8th January explanatory of petitioner's dispatches (Board's Record, pp. 1429–1439), and that it is what was incorporated by the

counsel in his lately submitted printed argument in lieu thereof, under the heading "Acts of General Porter and the dispatches during the afternoon of August 29, 1862." That it was an argument on that branch of the case and prepared for substitution after close of arguments, and not a mere arrangement of all the dispatches in their order for convenience of the Board; that as it contained, as he believed, material variations from the former argument on the subject, he would be pleased to see it printed, provided he could reply thereto and point them out.

1791 The President of the Board said substantially that the Board had, upon the suggestion of the Recorder, denied the request of the counsel (Mr. Bullitt) for permission to substitute the paper referred to for his argument as delivered to the Board on that branch of the subject, and had thus relieved the Recorder from the necessity of changing his own argument as delivered to meet any changes which might appear in Mr. Bullitt's proposed substitute. The arguments of both the two leading counsel and of the Recorder being thus allowed to stand as delivered to the Board, the paper subsequently submitted by Mr. Bullitt, and above referred to by the Recorder, so far as that paper contains any argument in addition to or different from that formerly delivered by Mr. Bullitt, is to be regarded in the light of a portion of the *closing* argument of counsel for the petitioner, it being immaterial whether that portion of the closing argument was actually submitted by Mr. Bullitt or by Mr. Choate, who had, under the ruling of the Board, the right to close the argument in the case. Hence, the Recorder is not called upon to reply to this paper any more than he is to any other portion of the closing argument of counsel, he having discharged his duty in answering the arguments of Messrs. Maltby and Bullitt *as delivered* to the Board. The members of the Board, having maturely considered the whole subject, do not desire to hear further argument. For these reasons the Board decided to deny Mr. Bullitt's request to have his argument, as rearranged and printed by him, substituted for his argument as delivered, and directed his rearranged argument to be attached to the record as a paper offered but not received *as such substitute.*

The subsequently submitted argument of Mr. Bullitt (of counsel for petitioner) referred to and received by the Board is as follows:

THE DISPATCHES OF AFTERNOON AUGUST 29, 1862.

It appears to me important, also, in considering the accusations against General Porter, that his acts should be reviewed from the time the joint order was received by him until the close of the day. For this purpose I propose to explain the bearing and to show the connection of the dispatches of General Porter on the afternoon of August 29, which were given in evidence on the trial by the court-martial, and those which were produced by General Morell and General McDowell in the recent examinations before this Board, together with what was done during that time.

I have already called attention to the preparations made by General Porter immediately upon coming in contact with the enemy on or near Dawkins' Branch. I have also called attention to the fact that while these movements were in progress the joint order was delivered to him by Dr. Abbott.

Immediately afterwards, and while the troops were still in motion in pursuance of these directions, General McDowell came up to the front with a duplicate of the joint order in his possession, and, under its au-

thority, the command of the joint forces devolved upon him as senior in rank.

At this moment Morell's division had come up and was largely deployed. Sykes was coming up, and King's division was immediately in rear of Sykes on the road from Manassas.

Immediately on arrival, General McDowell exclaimed (O. R., pp. 135 and 141, and N. R., pp. 391 and 410), "Porter, you are too far out already; this is no place to fight a battle." This expression of opinion Porter
interpreted, from the tenor of the "joint order" (then in his pos-
1792 session), and from his previous interviews with McDowell at Manassas, to mean that the command was then too far in advance of Bull Run and of the supports coming to the Army, and was not in proper position in relation to the other parts of the Army, to bring on such an engagement as must ensue from their continued joint movement.

All preparations and movements to advance at once ceased.

In order to convince Porter that Longstreet, or the main forces of the enemy hastening to the relief of Jackson, had made connection with him and was then practically in Porter's front, General McDowell showed Porter this dispatch:

HEADQUARTERS CAVALRY BRIGADE, 9.30 a. m.

Seventeen regiments, one battery, and five hundred cavalry passed through Gainesville three-quarters of an hour ago on the Centreville road. I think this division should join our forces now engaged at one. Please forward this.

JOHN BUFORD,
Brigadier-General.

General RICKETTS.

It was then known to both generals that the force named by General Buford was the advance divison of the forces which General Pope had declared in the "joint order" he did not expect "till to-morrow night or the next day."

Generals McDowell and Porter together rode through the woods to their right and to the rear of the line of battle of Morell, until they crossed the Manassas Gap Railroad. Their object was to see if King's division could be passed through the woods under cover from the sight of the enemy, and be made to connect Porter's right with the left of Reynolds' of McDowell's corps, then near Groveton.

General McDowell, finding he could not get King's division through the woods, turned suddenly back and rode rapidly to the rear along the railroad. To a call from Porter, "What shall I do?" he replied only by a wave of the hand.

Porter turned to go back to his command, and as he crossed the railroad, or at some point on his ride back, he discovered some movement of the enemy in his front, down the railroad, which led him to determine to make the attack or forward movement which had been brought to a stand by McDowell's coming up and telling Porter "He was too far out; this is no place to fight a battle." He was satisfied that to make it effectively he must have King's division with him.

To carry this purpose into effect, he determined to hold on to King's division, if he could do so, and dispatched Locke to King for that purpose.

Porter hoped to be able to hold on to King, intending to use him as a reserve in support of his movement, and to call him up as the deployment and advance of the corps permitted.

At this time Porter knew nothing of the character of the woods to his right. Its depth, its density, and the roads or paths through it were all unknown to him except at the point near the railroad examined by him and McDowell, at least a quarter of a mile in rear of the line of forma-

tion of Morell. There the woods were impenetrable for artillery and impracticable for infantry in any regular order.

At this time and throughout the afternoon Porter sent mounted messengers through the woods to communicate with the forces of McDowell and Sigel, and to ascertain the practicability of passing through the woods separating him from them. The dispatches soon to be quoted show that such of the messengers as returned to him represented the woods as impassable and the inability of uniting with those forces except by the Sudley Spring road, up which McDowell carried King.

1793

In pursuance of his intention to advance, Porter immediately ordered Morell to move his division over to the right, and in part across the railroad, and deploy in line of battle, and directed Sykes to move up and deploy on the left of Morell.

Thus the line of battle would be formed at right angles with the general direction of the railroad and the Manassas and Gainesville dirt road, and upon and across those roads, with King in reserve and in support along the Manassas and Gainesville dirt road.

He proposed then to move across Dawkins' Branch and attack the force which he knew was then in his front, and which he supposed to be gathering with increased force. He also intended, if possible, that Morell's right should connect or communicate with Reynolds on the right, if that should be found feasible, and it was at this time he commenced sending mounted messengers to the troops at Groveton.

This movement by Morell and Sykes was in part made, and was being rapidly continued, when Colonel Locke returned and delivered this message from General McDowell, whom he had found at the head of King's division: "Give my compliments to General Porter, and say to him I am going to the right, and will take King with me. I think he had better remain where he is, but, if necessary to fall back, he can do so on my left." (O. R., p. 135.)

Porter was convinced that it would be disastrous to make the movement with his own corps alone, and that he would be culpable to attempt it, especially in view of the course taken by General McDowell and his reasons therefor. Hence, on receipt of McDowell's message, he at once recalled Morell to his position south of the railroad, and while Morell was taking his position artillery opened upon him.

This movement is described by General Morell as follows:

> After a while I saw General McDowell and General Porter riding together; they passed off to our right into the woods toward the railroad, and after a time General Porter returned, and, I think, alone, and gave me orders to move my command to the right, over the railroad. I started then and got one brigade and, I think, one battery over the railroad, passing through a clearing (a cornfield), and had got to the edge of the woods on the other side of it, when I received orders to return to my former position; I led the men back, and as the head of the column was in front of Hazlitt's battery, which had been put in position, we received a shot from th enemy's artillery directly in front of us. (O. R., p. 146.)

It is described by General Griffin as follows:

> After the conversation General McDowell rode to the right; I received an order almost directly after General McDowell had left to recall my pickets and orders to move my command to the right; I attempted to go to the right, and moved probably 600 yards, until with the head of my column I crossed a railroad said to run to Gainesville. Here we met with obstructions which we could not get through. It was reported by somebody, I cannot say who, "You cannot get through there." We then faced about and moved back to the hill where the battery I first referred to was stationed. As we were getting to this hill the enemy's batteries opened upon us; my brigade was then placed in position in rear and to the right of the batteries, and remained there during considerable artillery firing. I cannot say how long. (O. R., p. 162.)

The movement to the right, as above described, was in the wood skirting the ridge on Dawkins' Branch, upon which Morell's troops were deployed when they first halted. It was not intended by General Porter to thrust his corps in over that broken cleared ground to his right and front and between Jackson's right and the separate enemy massing in his front, as General McDowell claimed in his evidence before the court-martial he directed him to do. That, in the judgment of General
1794 Porter, would have been "a fatal military blunder," and could have resulted in nothing but disaster. That opinion he expressed in his defense before the court-martial, and subsequent developments have only confirmed it.

His purpose was with Griffin's brigade of Morell's division (the largest of the three), slightly refused north of the railroad, to secure the right flank, and perhaps connect or, at least, communicate with Reynolds, to attack the enemy then in his front with the remainder of his corps supported by King, who could rapidly be brought up immediately south of the Manassas-Gainesville road, and formed to assist the center and left of the line.

Having recalled Morell to the ridge which he occupied when General McDowell left him, and having seen his command posted, and having Sykes immediately in rear supporting him, Porter took his position at the rear of Sykes' troops at Bethlehem Church, near the junction of the Gainesville and Sudley Springs road, this point being the most suitable from which to control his command and to quickly communicate with General McDowell, the latter having taken the Sudley Springs road to Bull Run and Groveton.

In these relative positions Porter's command remained till called away the next morning by General Pope's orders. Such changes as were made will be noticed hereafter; but they did not alter the relative positions in any material respect.

These movements probably required until about three o'clock.

Shortly after this General Porter took his position at Bethlehem Church, and the following dispatches passed between General Morell and himself:

[No. 30.]

GENERAL: Colonel Marshall reports that two batteries have come down in the woods on our right towards the railroad, and two regiments of infantry on the road. If this be so, it will be *hot* here in the morning.

GEO. W. MORELL, *Major-General.*

Indorsed as follows:

Move the infantry and everything behind the crest, and conceal the guns. We must hold that place and make it too hot for them. Come the same game over them they do over us, and get your men out of sight.

F. J. PORTER.

[No. 31.]

General PORTER: I can move everything out of sight except Hazlitt's battery. Griffin is supporting it, and is on its right, principally in the pine bushes. The other batteries and brigades are retired out of sight. Is this what you mean by everything?

GEO. W. MORELL, *Major-General.*

Indorsed as follows:

General MORELL: I think you can move Hazlitt's, or the most of it, and post him in the bushes with the others so as to deceive. I would get everything, if possible, in ambuscade. All goes well with the other troops.

F. J. P.

General Morell says, describing the movement directed to be made by General Porter in the indorsements upon the dispatches above set out:

I got the infantry back of the batteries under cover of the bushes and the crest of the ridge, and posted Waterman's battery on the opposite side of the Gainesville road, and we remained in that position the most of the day. (C. M. Rec., 146.)

It will be remembered that there was heavy artillery firing in the vicinity of Groveton about the time of the movements already
1795 described. Later, and probably between three and four o'clock, this firing lulled, and then broke out with increased vigor over to the northeast, in the direction of Sudley and toward Bull Run.

This change in the artillery firing led General Porter to suppose that the main army was retiring in the direction of Bull Run.

It is to be borne in mind also that the joint order stated that—

It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies.

The fire thus apparently retiring led Porter to suppose that purpose was being carried into effect, and it was then the following dispatch was sent (O. R., p. 31):

[No. 29.]

Generals McDowell and King: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced, and ours retired, I have determned to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messages have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going, and I will communicate with you. Had you not better send your train back?

F. J. PORTER, *Major-General.*

General Heintzelman's diary recites the substance of this dispatch, and shows it was received by General Pope at forty-five minutes past five.

The following dispatch is but a duplicate of the foregoing. General Porter sent the duplicate by another messenger, so that in case the one should not reach its destination the other would do so:

[NEW.]

Produced by General McDowell (Board Record, p. 810):

General McDowell: The firing on my right has so far retired that, as I cannot advance, and have failed to get over to you, except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and General Sigel, and get nothing.

F. J. PORTER, *Major-General.*

An artillery duel is going on now—been skirmishing for a long time.

F. J. P.

This dispatch, or another one of the same family, not yet produced, was seen by General Sullivan, and is described by him. (N. R., pp. 99, 100, 101.)

In pursuance of the purpose expressed in these dispatches, Porter sent to Morell the following order (N. R., p. 423):

[No. 28.]

August 29th, 1862.

General Morell: Push over to the aid of Sigel and strike in his rear. If you reach a road up which King is moving, and he has got ahead of you, let him pass, but see if

you cannot give help to Sigel. If you find him retiring, move back toward Manassas, and should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right as you return.

F. J. PORTER, *Major-General.*

Look to the points of the compass for Manassas.

It is not possible now to determine with absolute certainty the route by which General Porter expected General Morell to move under this order; for it should be borne in mind that General Porter had not explored, except with mounted messengers, the woods north of the railroad. and knew nothing of their character, except at the point visited by General McDowell and himself, and also that at which General Morell had attempted to move through in his proposed deployment to the right.

1796

It is evident he intended Morell should move concealed through the woods in rear of the line then formed, and it is probable he supposed General Morell might move back on or near the railroad, until he reached some point at which he might cross over toward the Warrenton pike.

Whatever may have been the route he contemplated that Morell should take, it would seem that this order must have been given in furtherance of the intention to withdraw as indicated in the above dispatches, yet it is manifest it was given for the purpose of aiding the other troops, and provided for a withdrawal from the field only in contemplation of the fact that the troops on the right were falling back.

But soon, finding he was mistaken as to the main army retiring, and feeling the importance of holding his then strong position, and before anything was done by Morell in execution of the order, he sent him the following (N. R., p. 424):

[No. 33.]

General MORELL: Hold on, if you can, to your present place. What is passing?

F. J. PORTER.

[No. 32.]

General MORELL: Tell me what is passing, quickly. If the enemy is coming, hold to him, and I will come up. Post your men to repulse him.

F. J. PORTER, *Major-General.*

The dispatch sent by the hands of Lieutenant Weld and delivered to General Pope about five o'clock now comes in as one of the missing links not yet produced by General Pope.

Lieutenant Weld testified (C. M. Rec., p. 129):

I was sent with a message, sent to General Pope, but to be delivered to either General McDowell or General King. I first received a written message, and then General Porter gave me a verbal message to the effect that General Morell would now be strongly engaged; that there was a large force in front of us; that large clouds of dust were seen there, &c. I also glanced over the written message, and it was to the same effect, but much more minutely, with details of which I do not now remember.

The Recorder has asserted that this dispatch was No. 29, the one addressed jointly to Generals McDowell and King. But he must have forgotten that Lieutenant Weld testified—

I do not think that is the one. (The joint dispatch to McDowell and King had just been shown the witness.) *The one I took General Pope put in his vest pocket.*

I do not wish to exaggerate the importance of this dispatch or the wrong done General Porter by the failure of General Pope to produce it. And yet it is quite manifest that, if produced, it could but aid most

materially in clearing up any seeming obscurity that may hang over the transactions of that afternoon. The hour at which it was written, its tenor and subjects, as remembered by Weld, and the fact that it was from Porter to his commander-in-chief, warrant the belief that, if produced, it would tend in the strongest manner to negative the accusation of bad faith or misconduct on the part of General Porter. Those details which Weld could not remember would, probably, shed a flood of light not only upon Porter's conduct at that time, but also upon the motives and conduct of General Pope in the course he pursued upon that day and subsequently in reference to General Porter.

1797 After Lieutenant Weld's departure to General Pope, Major Earle, of General Morell's staff, delivered to Porter dispatch No. 34, endorsed with No. 35. These are described by General Morell and Major Earle in their testimony (N. R., pp. 410, 411, 412, 427, 428, 429).

[No. 34.]

General MORELL: The enemy must be in a much larger force than I can see; from the commands of the officers, I should judge a brigade. They are endeavoring to come in on our left, and have been advancing. Have also heard the noise on left as the movement of artillery. Their advance is quite close.

E. G. MARSHALL,
Colonel Thirteenth New York.

[No. 35.]

General PORTER: Colonel Marshall reports a movement in front of his left. I think we had better retire. No infantry in sight, and I am continuing the movement. Stay where you are to aid me if necessary.

MORELL.

In response to dispatch No. 35, the following was sent by an orderly, and while on its way to Morell, it, or another of the same purport, was read by General Warren, who at once dispatched to General Sykes as below:

[No. 36.]

General MORELL: I have all within reach of you. I wish you to give the enemy a good shelling without wasting ammunition, and push at the same time a party over to see what is going on. We cannot retire while McDowell holds his own.

F. J. P.

5 h. 45 m. p. m., *Aug.* 29, '62.

General SYKES: I received an order from Mr. Cutting to advance and support Morell. I faced about and did so. I soon met Griffin's brigade withdrawing, by order of General Morell, who was not pushed out, but retiring. I faced about and marched back 200 yards or so. I met then an orderly from General Porter to General Morell, saying he must push on and press the enemy; that all was going well for us, and he was retiring. Griffin then faced about, and I am following him to support General Morell, as ordered. None of the batteries are closed up to me.

Respectfully,

G. K. WARREN.

General Warren explains his dispatch (N. R., pp. 19, 20.) It shows from its date 5.45 p. m., about the hour which these dispatches were received and sent back.

Immediately following No. 36, dispatch No. 37 was sent by the hands of Major Earle. Both General Morell and Major Earle explain why the attack was not made under this order No. 37 (N. R., pp., 410, 411, 412, 427, 428, 429).

[No. 37.]

AUGUST 29TH.

General MORELL: I wish you to push up two regiments supported by two others, preceded by skirmishers, the regiments at intervals of two hundred yards, and attack

the section of artillery opposed to you. The battle works well on our right, and the enemy are said to be retiring up the pike. Give the enemy a good shelling as our troops advance.

F. J. PORTER,
Major-General Commanding.

General Morell, believing this attack would bring on a disastrous repulse followed by a strong pursuit, commenced putting all his command in his front line, and urged Porter, in consequence of the great strength of the enemy, not to make it. During the delay of this prepar-
1798 ation, Porter became satisfied that Morell was right, and that, by holding the enemy before him, he was producing all the good effects of a battle and would get none of its evils.

Hence, as the day was nearly ended—then sunset—Porter suspended the attack by the following order, which put the troops in position for any service that might be required after the return of Lieutenant Weld from General Pope (O. R., page 153):

[No. 38.]

General MORELL: Put your men in position to remain during the night, and have out your pickets. Put them so that they will be in position to resist anything. I am about a mile from you. McDowell says all goes well and we are getting the best of the fight. I wish you would send me a dozen men from the cavalry. Keep me informed. Troops are passing up to Gainesville, pushing the enemy; Ricketts has gone, also King.

F. J. PORTER, *Major-General.*

This dispatch was sent to Morell before the 4.30 order was received by Porter. It therefore necessarily preceded the sending of Colonel Locke to Morell with the message to make the attack hereafter described. This message by Locke was sent in consequence of the receipt of the 4.30 order by Porter. But it appears that Colonel Locke had reached Morell and delivered his message in advance of the person who carried dispatch No. 38 (O. R., p. 158).

About this time General Porter sent the following:

Newly produced by McDowell (N. R., p. 110):

General McDOWELL or KING: I have been wandering over the woods, and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
Major-General Volunteers.

Newly produced by McDowell:

General McDOWELL: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened on us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded, as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs, whether you retire or not. I cannot get water, and am out of provisions. Have lost a few men from infantry firing.

F. J. PORTER,
Major-General Volunteers.

AUG. 29, 6 p. m.

The two dispatches last sent out are evidently duplicates of each other. They were sent by different messengers, and probably by different routes, so as to secure that one of them should reach the intended destination. It is quite evident that they intended to describe, in short,

the movement of Morell over to the right, the inability to communicate, the moving of the enemy on his right, also their movement on the left, stated by Marshall in No. 34, and to ask for such information as would enable Porter to determine what he should do for the night, which was then approaching. It is a mistake to suppose that these dispatches intended to describe only the events occurring immediately before their date (6 p. m.) They run hurriedly over the events of the after-
1799 noon, beginning with the time of the separation of McDowell from Porter, and coming down to 6 p. m., so as to give an idea of the situation at that time.

These dispatches contain intrinsic evidence that they were written before General Porter had received the 4.30 order. The language found in them could not have been used by Porter if he had already received the order to attack, as contained in the 4.30 order.

They are produced by General McDowell on this hearing for the first time, and furnish the strongest confirmation that the 4.30 order was not delivered to General Porter until after 6 p. m., the date of the last dispatch.

That this 4.30 order was not received till a later hour—or after sunset, as General Porter has always asserted—is evident also from the words of dispatch No. 38 to Morell. That dispatch shows that General Porter had received some information of the movement upon Groveton of King's division, under Hatch, which, as we know, did not take place till after 6 p. m., and that General McDowell was expecting great results from the pursuit of the supposed fleeing foe.

Dispatch 38 was sent prior to the receipt of the 4.30 order, but in consequence of its having been delivered to Morell after the arrival of Colonel Locke with the 4.30 order, an erroneous impression was created that the order No. 38, "to post his men for the night," was written after the one sent by Locke to attack *with his whole* division. This fact, and the fact that Morell believed until this hearing that the order No. 37 was issued on receipt of the 4.30 order, has caused much confusion of facts in this part of his evidence before the court-martial.

It was this confusion which afforded the Judge-Advocate occasion in his review to state that "Colonel Locke states that soon after the receipt of the order from General Pope he bore one from the accused to General Morell, directing him to engage the enemy, which, as appears from the statement of Colonel Marshall, was to be done with but four regiments. But General Morell testified that before there was time to carry this order into execution—say within about half an hour after its receipt—it was countermanded by another, directing him to pass the night with his troops where he was. This was all that was done toward attacking the enemy."

That the Judge-Advocate and the court-martial were led into error on this point is now made manifest by the evidence of General Morell (N. R., pp. 427, 428, 429), and of Major Earle (N. R., pp. 410, 411, 412), and of Colonel Locke (O. R., p. 223).

They prove conclusively that the order to attack with four regiments was given before the 4.30 order was received by General Porter, and they also explain, when their testimony is taken in connection with that of Colonel Locke, how the misapprehension arose.

The order to attack with four regiments was sent by Major Earle, and delivered by him. The order to post his men for the night was sent to Morell by another messenger. The order to attack "with his division," in pursuance of the 4.30 order, was sent by Locke after this, but reached Morell before the order to post his troops for the night was delivered.

But General Morell supposed it to be a countermand of the last order sent by Locke, instead of the previous one sent by Earle.

It was not until he heard the statement of Major Earle at West Point on this hearing, in connection with an examination of Locke's testimony before the court-martial (p. 223), that he was able to clear up the confusion into which he had fallen.

1800 After the occurrences to which I have referred, and certainly after sunset, General Porter received the following order:

[No. 39.]

HEADQUARTERS IN THE FIELD,
August 29, 1862—4.30 p. m.

Major-General PORTER: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds.

The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to yo ur right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commandi

Immediately on receipt of the above order General Porter sent Colonel Locke with verbal orders to General Morell to attack with his whole force, and after writing to General Pope an acknowledgment of the receipt of the order, General Porter went himself to Morell, and then the events occurred which are described by General Morell, N. R., pp. 427, 428, 429, and Colonel Locke, N. R., 297, 298, 299.

In further explanation on this important point, attention is called to the fact that the order (37) under which Morell was moving his troops into position for an attack (C. M. Rec., 146) spoke of "*the enemy as retiring*," and directed an attack with "*two regiments supported by two others*." Whereas the order sent and delivered by Colonel Locke, on receipt of the 4.30 order, directed Morell "to move forward his *division* and attack the enemy" (C. M. Rec., p. 223).

When General Porter arrived at the front he found it was so late, and the night was approaching so nearly, it was impossible to make the attack as ordered by him in pursuance of the 4.30 order, and he verbally directed General Morell to put his men in position for the night.

Other dispatches were sent by General Porter to Generals Pope and McDowell, but as all went into their hands and have not been returned, it has not been in General Porter's power to define them.

In arranging these dispatches it has been with reference to their order as to time, as shown by the testimony and the dispatches themselves. The order may not be entirely correct. But we believe there cannot be much variation as to the time or mistake as to the order. We present this as being as nearly accurate as can now be arrived at.

One especially (C. M. Record, p. 32), acknowledged by General Pope to have been received as reply to receipt of the 4.30 order, would be especially of value as fixing the hour of receipt of that order, and Porter's opinion at that hour of the condition of affairs in his front.

The fact that I speak with any diffidence as to the exact order of the dispatches may elicit some comment. But it should be borne in mind that upon the trial before the court-martial General Porter did not have the dispatches produced before this Board by General McDowell, nor several of those now produced by General Morell, nor the one produced by General Warren.

He did not then have, and has not now, either the dispatch sent to General Pope through Lieutenant Weld, or the reply to the 4.30 order sent to General Pope by the hands of Captain Pope. The length of time which has elapsed renders it somewhat difficult for General Porter to arrange the dispatches or the events in their exact sequence.

But I submit that when the contents of the dispatches are
1801 properly considered in connection with the events as described by the witnesses, they will sustain the arrangement I have given above.

They explain what General Porter was doing throughout all the hours of that afternoon, and must silence the charge that he was lying idle during that period.

As there was no business requiring the further attendance of the Recorder, he withdrew, and the Board continued its deliberations until 1 p. m., when it adjourned to meet at the call of the President of the Board, after having prepared the following report, viz:

NEW YORK CITY, *March* 19, 1879.

To the honorable the SECRETARY OF WAR, *Washington, D. C.:*

SIR: We, the Board of Officers appointed by order of the President to examine the evidence in the case of Fitz-John Porter, late Major-General of Volunteers, and to report, with the reasons for our conclusions, what action (if any), in our opinion, justice requires should be taken by the President on the application for relief in that case, have the honor to make the following report. The Recorder has been directed to forward to the Adjutant-General of the Army the printed record of our proceeding, including all the evidence examined and the arguments of counsel on either side:

We have made a very thorough examination of all the evidence presented and bearing in any manner upon the merits of the case. The Recorder has, under instructions from the Board, sought with great diligence for evidence in addition to that presented by the petitioner, especially such as might appear to have a bearing adverse to the claims urged by him.

Due care has been exercised not to inquire into the military operations of the Army of Virginia, or the conduct of officers thereof, any further than has seemed necessary to a full and fair elucidation of the subject submitted to us for investigation. On the other hand, we have not hesitated to examine fully into all the facts, accurate knowledge of which seemed to us to be necessary to the formation of a correct judgment upon the merits of the case, and to the determination of the action which justice requires should be taken by the President on the petitioner's application for relief.

We have had the benefit of the testimony of a large number of officers of the late Confederate army, a kind of testimony which was not available at the time of General Porter's trial by court-martial. We have also availed ourselves of the testimony of many officers and soldiers of the Union forces who were present on the battle-field and of much documentary evidence, to throw additional light upon points not made perfectly clear in the record of evidence taken before the court-martial; and we have had the use of accurate maps of the battle-field of Manassas, constructed from recent actual surveys made, under the direction of the Chief of Engineers, by a distinguished officer of that corps, who was himself a participant in that battle.

Without such a map neither the testimony upon which General Por-

ter was convicted nor the additional testimony submitted to this Board could have been correctly understood.

The evidence which we have thus been able to examine, in addition to that which was before the court-martial, has placed beyond question many important facts which were before the subjects of dispute and in respect to some of which radically erroneous opinions were entertained by General Porter's accusers, and doubtless by the court-martial that pronounced him guilty.

1802

The result has been, as we believe, to establish beyond reasonable doubt all the facts essential to the formation of a correct judgment upon the merits of the case of Fitz-John Porter. We are thus enabled to report, with entire unanimity, and without doubt in our own minds, with the reasons for our conclusions, what action, in our opinion, justice required should be taken by the President on the petitioner's application for relief.

The evidence presents itself under several distinct heads, viz:

First. The imperfect, and in some respects erroneous, statements of facts, due to the partial and incorrect knowledge in possession of witnesses at the time of the court-martial, and the extremely inaccurate maps and erroneous locations of troops thereon, by which erroneous statements were made to convey still more erroneous impressions.

Second. The opinions and inferences of prominent officers based upon this imperfect knowledge:

Third. The far more complete and accurate statements of facts now made by a large number of eye-witnesses from both the contending forces.

Fourth. The accurate maps of the field of operations and the exact positions of troops thereon at different periods of time, by which statements otherwise contradictory or irreconcilable are shown to be harmonious, and opposing opinions are shown to have been based upon different views of the same military situation; and,

Finally. The conflicting testimony relative to plans of operations, interpretation of orders, motives of action, and relative degrees of responsibility for unfortunate results.

A careful consideration of all the material facts now fully established, in combination with the conflicting or inconclusive testimony last above referred to, gives rise to several diverse theories respecting the whole subject with which General Porter's case is inseparably connected. These diverse views of the subject necessarily involve, in a greater or less degree, the acts, motives, and responsibilities of others as well as those of the petitioner. We have considered with great care and labor, and with our best ability, each and all of these phases in which the subject can be and has been presented, and we find that all these possible views of the subject, when examined in the light of the facts which are fully established by undisputed testimony, lead inevitably to one and the same conclusion in respect to the guilt or innocence of Fitz-John Porter of the specific charges upon which he was tried and pronounced guilty by the court-martial.

Therefore, while exposing General Porter's conduct to the test of the highest degree of responsibility which recognized military principles attached to the command he held under the circumstances in which he was placed, and the orders which he had received, we are able to take that view of the whole subject which seems to involve in the least possible degree any question as to the acts, motives, or responsibility of others.

We will now proceed to give, as concisely as we are able to do, a nar-

rative of the events which gave rise to the charges against Maj. Gen. Fitz-John Porter, omitting the multitude of interesting but unessential details and all facts having no necessary bearing upon his case, and limiting ourselves to a plain statement of the essential facts of the case which have been established, as we believe, by positive proof.

1803 While the Army of the Potomac was withdrawing from its position on the James River in August, 1862, the Army of Virginia, under Major-General Pope, was ordered to hold the line of the Rappahannock, and to stand on the defensive until all the forces could be united behind that river. General Pope was given to understand that, when this concentration was effected, Major-General Halleck, the General-in-Chief, was to take the field in command of the combined armies. On the other hand, it appears that Major-General McClellan, then commanding the Army of the Potomac, was given to understand that he was to direct the operations of all the forces in Virginia, as soon as they should be united.

It appears that General Pope was notified on the 25th of August that an active campaign was soon to be commenced, without waiting for a union of all the forces, and under some commander other than either of those before named. But this information appears to have been of a secret character, afterwards suppressed, and not made known to General McClellan and his subordinates until five days later, when the order appeared from the War Department, depriving McClellan of the command of all his troops then between the Potomac and the Rappahannock, although leaving him in nominal command of the Army of the Potomac.

Thus General Porter, who joined General Pope's army about that time, was left under the impression, which all had previously shared, that the operations of the army were to continue of a defensive character until all the forces should be united and proper preparations made for the commencement of an offensive campaign under a general designated by the President to command the combined armies. But just then the Confederate general, Jackson, with three divisions of infantry, one of cavalry, and some artillery, commenced his movement to turn the Union right through Thoroughfare Gap, which gap he passed on the 26th, and that night struck the rear of the Union Army at Bristoe and Manassas Junction. The next morning, August 27, the Union Army changed front to the rear, and was ordered to move on Gainesville, Greenwich, and Warrenton Junction.

General Porter, with his two divisions of the Fifth Corps, arrived at Warrenton Junction on the 27th, and there reported in person to General Pope. That afternoon Hooker's division was engaged with the enemy at Bristoe Station; McDowell and Sigel were moving on Gainesville, and Heintzelman and Reno on Greenwich. Banks was covering the rear below Warrenton Junction, and guarding the trains in their movement toward Manassas Junction. Porter was at first ordered to move toward Greenwich upon the arrival of Banks at Warrenton Junction, but after Hooker's engagement at Bristoe the following order was sent him, and he received it at 9.50 p. m.:

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—6.30 p. m.

Major-General F. J. PORTER, *Warrenton Junction:*

GENERAL: The major-general commanding directs that you start at 1 o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about 300 killed and wounded. The enemy has been

driven back, but is retiring along the railroad. We must drive him from Manassas, and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send him word to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary on all accounts that you should be here by daylight. I send an officer with this dispatch who will conduct you to this place. Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of
1804 Bealeton. Say to Banks, also, that he had best run back the railroad trains to this side of Cedar Run. If he is not with you, write him to that effect.

By command of General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately upon his doing so. If Banks is not at the junction, instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and a section of artillery with it.

By command of General Pope.

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

This order plainly contemplated an aggressive movement against the enemy early on the 28th, and required the presence of General Porter's corps at Bristoe Station as early as possible in the morning, to take part in the pursuit of and attack upon the enemy.

The order did not indicate any anticipation of defensive action at Bristoe, but, on the contrary, it indicated continuous, active, and aggressive operations during the entire day of the 28th, to drive the enemy from Manassas, and clear the country. Hence the troops must arrive at Bristoe in condition for such service.

The evidence clearly shows that General Porter evinced an earnest desire to comply literally with the terms of the order, and that he held a consultation with his division commanders, some of his brigade commanders, and his staff officers on the subject. One of his divisions had arrived in camp late in the evening, after a long march, and was much fatigued.

If the troops marched at 1 o'clock, none of them could have much sleep before starting, and, even if they could arrive at Bristoe by or soon after daylight, they must be in poor condition for a vigorous pursuit of the enemy, who was already some distance beyond Bristoe. But this was not regarded by General Porter as sufficient reason for hesitating to make the attempt to comply literally with the order. He still urged, against the advice of his division commanders, the necessity of implicit obedience. Then, further consideration of the subject disclosed the fact that the road was filled with army trains, which had been pressing in that direction all day and as late at night as they could move, until the way had become completely blocked with wagons. The trains of the army moving back from the line of the Rappahannock had been ordered to take that road to the number of "two or three thousand." In the language of one of the most intelligent witnesses, the mass of wagons blocked together at places in the road was "like a lot of ice that jams in on the shore." The night had become very dark, or, as testified by most of the witnesses, excessively dark. It would have been difficult to march troops upon a plain and unobstructed road. It was a manifest physical impossibility to march over that road that night, or to remove the obstructions in the darkness of the night. When this situation was made evident, General Porter reluctantly consented to delay the movement two hours, or until 3 o'clock. At that hour the march was commenced, but it was found that no appreciable progress could be made

before daylight. Nothing was gained, or could have been gained, by the attempt to move before the dawn of day. It would have been wiser to have delayed the attempt to move until 4 o'clock.

A vigorous and persistent effort to make that march, commencing at 1 o'clock, could only have resulted in greatly fatiguing the troops and throwing them into disorder, from which they could not have been 1805 extricated until long after daylight, without making any material progress, and would thus have caused the corps to arrive at Bristoe at a later hour and in a miserable condition.

Abundant experience in situations similar to that above described leaves no room for doubt what General Porter's duty was. He exercised only the very ordinary discretion of a corps commander, which it was his plain duty to exercise, in delaying the march until 3 o'clock, and in his attempt to move at that time instead of at 4 o'clock he showed only too anxious a desire to comply with the *letter* of his orders.

If the order had contemplated, as has been represented, an attack by the enemy at dawn of day, then it would have been General Porter's duty to start promptly, not at 1 o'clock, but at the moment he received the order, so as to have brought at least some fragments of his infantry to Bristoe in time to aid in repelling that attack. That was the most that he could have done in any event, even by starting the moment the order was received, and then his troops would have been in no condition for any aggressive movement that day.

General Porter reached Bristoe Station as soon as practicable with his corps on the morning of the 28th, and there remained, under orders from his superior commander, until the morning of the 29th, taking no part in the operations of the 28th.

In the morning of the 28th, McDowell sent Ricketts' division of his corps to Thoroughfare Gap to resist the advance of re-enforcements from the main body of Lee's army, then known to be marching to join Jackson. Banks was at Warrenton Junction and Porter at Bristoe. The rest of the army moved from Gainesville, Greenwich, and Bristoe on Manassas Junction to attack Jackson at that place; but that general withdrew his forces during the night of the 27th and morning of the 28th, toward Sudley and Groveton. He was followed by Heintzelman and Reno, via Centreville; and McDowell and Sigel, after having marched some distance toward Manassas, were ordered to direct their march toward Centreville. In this movement toward Centreville, King's division of McDowell's corps struck the right of Jackson's force, late in the afternoon, just north of the Warrenton turnpike, a mile west of Groveton. A sharp contest ensued, lasting until some time after dark, when King still held his ground on the turnpike. Reynolds was then near the right of King, Sigel on his right near the Stone House, Heintzelman and Reno near Centreville; Ricketts, who had been sent in the morning to Thoroughfare Gap, was disputing with Longstreet the passage of the gap.

Thus it was still hoped to strike Jackson a decisive blow on the morning of the 29th, before re-enforcements could reach him. In the mean time the Confederate general had taken up a favorable position a little to the north and west of Groveton and Sudley to await attack.

Under these conditions General Porter, who was still at Bristoe Station, received, at 6 a. m., the following order from General Pope:

HEADQUARTERS ARMY OF VIRGINIA,
Near Bull Run, August 29, 1862—3 a. m.

GENERAL: McDowell has intercepted the retreat of Jackson. Sigel is immediately on the right of McDowell. Kearney and Hooker march to attack the enemy's rear at

early dawn. Major-General Pope directs you to move upon Centreville, at the first dawn of day, with your whole command, leaving your trains to follow. It is very important that you should be here at a very early hour in the morning. A severe engagement is likely to take place, and your presence is necessary.

I am, general, very respectfully, your obedient servant,

GEORGE D. RUGGLES,
Colonel and Chief of Staff.

Major-General PORTER.

1806 Under this order, General Porter marched promptly with his corps toward Centreville. He had passed Manassas Junction with the head of his column, when he was halted by counter orders, issued in consequence of a grave change which had occurred in the situation since the night before.

King had withdrawn from his position near Jackson's right, on the Warrenton turnpike, and had fallen back to Manassas Junction. Ricketts had fallen back in the night from Thoroughfare Gap to Gainesville, and thence, in consequence of the movement of King, had retired to Bristoe Station.

Thus the way had been left open for the retreat of Jackson to Thoroughfare Gap, or for the advance of Longstreet from that point, and ample time had elapsed for them to effect a junction, either at the Gap or near Groveton, before a force could again be interposed to prevent it. The opportunity to attack Jackson's detached force with superior numbers had passed beyond the possibility of recall.

As soon as the withdrawal of King became known to General Pope, he hastily sent a verbal message to General Porter to retrace his steps and move towards Gainesville, and soon followed this message with the following order, which was received by General Porter about 9.30 a. m.:

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Push forward with your corps and King's division, which you will take with you, upon Gainesville. I am following the enemy down the Warrenton turnpike. Be expeditious or we will lose much.

JOHN POPE,
Major-General, Commanding.

Under these orders General Porter advanced promptly with his corps, followed by King's division, on the direct road from Manassas Junction toward Gainesville, having knowledge of the military situation as above described.

General Porter had met General McDowell near Manassas Junction, and they had conversed with each other relative to this order, placing King's division under Porter's command. McDowell claims that it was conceded that he might go forward and command the whole force, under the 62d Article of War, but he desired to reunite all the divisions of his corps on that part of the field where Reynolds then was. Hence he wrote to Pope on this subject, awaited his orders, and did not exercise any command over Porter's corps until after the receipt of further orders from Pope.

When, about 11.30 o'clock, the head of Porter's column arrived at Dawkins' Branch, about three and a half miles from Gainesville and nine and a half miles from Thoroughfare Gap, he met the enemy's cavalry advance, and captured some of Longstreet's scouts. The clouds of dust in his front and to his right, and extending back toward Thoroughfare Gap, showed the enemy coming in force, and already arriving on thefield in his front.

Morell's division was at once deployed; Sykes closed up in support,

King's division following. A regiment was sent forward across the creek, as skirmishers, and Butterfield's brigade was started across the creek to the front, and somewhat to the right, with orders to seize, in advance of the enemy, if possible, the commanding ground on the opposite ridge, about a mile distant. Morell's division, with Sykes in support, was ready to advance at once to the support of Butterfield.

At this stage of Porter's operations, some time between 11.30 and 12 o'clock, McDowell, in person, arrived on the field and arrested the movement Porter was making, saying to him in the hearing of several
1807 officers, "Porter, you are too far out. This is no place to fight a battle," or words to that effect.

McDowell had received, a few minutes before, a dispatch from Buford, informing him that seventeen regiments of infantry, a battery, and some cavalry had passed through Gainesville at 8.45 o'clock, and moved down the Centreville road toward Groveton, and hence must have been on the field in front of Sigel and Reynolds at least two hours.

The dust in Porter's immediate front and extending across toward Groveton, as well as back toward Gainesville, showed that large forces of the enemy, in addition to those reported by Buford, were already on the field. The latest information from the Confederate army showed the whole force of the enemy within reach of Gainesville by noon on the 29th. McDowell's troops (Ricketts' division and some cavalry) had delayed Longstreet's advance at Thoroughfare Gap from about noon until dark on the previous day, 28th. Hence, Lee's column had had eighteen hours by the morning of the 29th to close up in mass near the Gap, and seven hours that morning in which to march eight miles and form line on the field of battle.

Jackson, who had been supposed anxious to retreat, and for whom the way had been left open, had not retreated, but was still holding his position of the previous evening, as if confident of adequate reinforcements. Sigel's pursuit had been checked, where it started that morning, at Groveton.

It was certain that the head of column of Lee's main army had arrived on the field in front of Groveton at least two hours in advance of the arrival of the head of column of Porter's and McDowell's corps at Dawkins' Branch, and it was so nearly certain that the main body of Lee's army was already on the field and in line of battle as to absolutely require corresponding action. This was Porter's impression at the time, and he conveyed it to McDowell by words and gesture that left no doubt in the mind of the latter that he (Porter) believed the enemy was in force in his immediate front.

In contrast to this evident preparation of the enemy for battle, only Porter's nine or ten thousand men were ready for action, of the thirty-five thousand men then composing the left wing of the Union Army.

Banks' corps, ten thousand, was still at Bristoe without orders to move beyond that point. Ricketts' division, eight thousand, was near Bristoe, under orders to move to the front, but his men were so worn out by constant marching, night and day, that they could not possibly be got to the field even for defensive action that day. King's division, seven thousand, was just in rear of Porter, but was so fatigued as to be unfit for offensive action, and hardly able to march.

Thus this long column, stretching back from Dawkins' Branch by way of Manassas Junction to and even beyond Bristoe, had struck the right wing of the Confederate army in line of battle, while a gap of nearly two miles remained in the Union line between Porter and Reynolds, who was on the left of Sigel, near Groveton.

The accompanying map, marked Board Map No. 1, illustrates the positions of the Union troops at noon of August 29th, and the probable positions of the Confederate troops at the same time, as indicated by the information then in possession of the Union generals. This map is not intended to show the actual positions of the troops at that time, but to correctly interpret the information upon which the Union generals then acted.

This was the military situation on the Union left and Confederate right of the field when McDowell arrested Porter's advance, and Porter's
1808 operations under the direct orders from Pope heretofore mentioned ceased, and, under new orders just received, Porter became subordinate to McDowell.

Not only had the effort to destroy Jackson before he could be reinforced totally failed, but the Confederate army was on the field and in line, while the Union army was not. The time to resume defensive action, awaiting the concentration of the army, had not only arrived, but had been too long postponed.

On his way to the front McDowell had received the following order from General Pope, addressed jointly to him and Porter, and Porter had received a copy of the same order a moment before McDowell's arrival:

[General Order No. 5.]

HEADQUARTERS ARMY OF VIRGINIA,
Centreville, August 29, 1862.

Generals McDOWELL and PORTER: You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own the whole command shall halt. It may be necessary to fall back behind Bull Run, at Centreville, to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall upon the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order it will not be strictly carried out. One thing must be had in view, that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be for the present with Heintzelman's corps or at this place.

JOHN POPE,
Major-General, Commanding.

This order and the 62d Article of War made it the duty of McDowell to command the combined corps, so long as they should continue to act together, and General Pope should be absent from the field. In this interpretation of the law Generals McDowell and Porter agreed, and upon it they acted at the time. Upon McDowell devolved the responsibility of modifying the joint order as its terms authorized, and as the military situation seemed imperatively to require.

The terms of the order contemplating that communication should be established with the troops on the other road, or, as General McDowell interpreted it, that line should be formed in connection with those troops, that the whole command should then halt, and that the troops must not go beyond a point from which they could reach Bull Run by that night

or the next morning, and the military situation as it then appeared to them, was briefly discussed by the two generals.

The situation was exceedingly critical. If the enemy should attack, as he seemed about ready to do, Porter's two divisions, about nine thousand men, were all the force then ready to stand between Lee's main army, just arrived on the field, and McDowell's long and weary column, or the left flank of Pope's army near Groveton. McDowell was "excessively anxious" to get King's division over on the left of Reynolds, who then occupied with his small division that exposed flank: and he quickly decided that "considerable advantages" were "to be gained" by departing from the terms of the joint order, so far as to make no attempt
1809 to go further toward Gainesville, and to at once form line with the troops then engaged near Groveton; and this departure from the strict letter of the joint order was evidently required by the military situation as it then appeared and as it did actually exist.

After this brief consultation the two generals rode together through the woods to the right, about three quarters of a mile toward Groveton, and made a personal examination of the ground. As soon as this was done, McDowell decided not to take the troops through these woods, but to separate his own corps from Porter's, take King's division (Ricketts following) around the woods by the Sudley Springs road, and thus put them in beyond the woods and on the left of Reynolds.

McDowell then left Porter very hurriedly, announcing his decision, as he testified, by the words, "You put your force in here, and I will take mine up the Sudley Springs road on the left of the troops engaged at that point against the enemy," or words to that effect. Even these few words, we are satisfied, Porter did not hear, or did not understand, for he called, as McDowell rode away, "What shall I do?" and McDowell gave no audible answer, but only a wave of the hand. In this state of uncertainty, according to the testimony of one of General Porter's staff officers, Porter sent a message to King's division to ascertain positively if that division was ordered away by McDowell, and, if not, to give proper orders for its action with his corps, and a reply was returned by McDowell himself that he was going to the right and should take that division with him: that Porter had better stay where he was, and if necessary to fall back, he could do on McDowell's left.

This testimony has given rise to much controversy: but, in our opinion, the question whether that message was or was not sent is unimportant. If it was sent, it did not differ in substance from the instructions which General McDowell testifies he had previously given to General Porter, "You put your force in here," &c. Neither could be construed as directing what Porter's action should be, but only as deciding that he should continue on that line while McDowell would take his own troops to another part of the field.

There appears to have been an understanding, derived either from previous conversation or from the terms of the joint order, that when McDowell did get King's division on the other side of the woods, Morell's division on the right of Porter's corps should make such connection or establish such communication with that of King as might be practicable through the woods. None of them then knew how wide was that belt of woods, nor what was its character beyond where they had reconnoitered, nor whether the ground beyond was in possession of the enemy.

When the two generals had started to take that ride to the right, Morell's troops had been ordered to follow them, and Griffin's brigade had led off after its pickets had been called in. After McDowell took his departure this movement was continued for some time and until

Griffin had crossed the railroad and reached a point near half way across the belt of woods and where the forest became dense. There the movement was arrested. This movement might have meant an attempt to stretch out Morell's line through the woods, so as to connect with King's on the right, or a completion of the deployment for an attack upon the enemy in front. General Porter explained it as intended for an immediate attack upon the enemy if he found he could keep King in support, and that he only desisted upon being informed that King was going away. But the attack would have been a rash one under the circumstances, even with King's support. Soon after this, scouts were
1810 sent on through the woods to look for King, Reynolds, Sigel, or some body of Union troops in the direction where artillery firing was heard.

Presently Griffin was withdrawn to the south side of the railroad. The enemy's artillery opened on his troops during this latter movement, and was replied to by one of Morell's batteries, but few shots being fired on either side. Then Morel's division was put in defensive order to hold the ground then occupied and under cover from the enemy's artillery. The scouts sent through the woods ran upon the enemy's pickets, and were driven back. This effort to get scouts through the woods was repeated from time to time until late in the afternoon, but every effort failed. The scouts were all driven back or captured. As it turned out, this resulted from the fact that King's division did not get up on the right of the woods at all. That division reached a point some distance in the rear of its position in the line about 4.30 p. m., and then, after some marching and countermarching, was sent northward to the Warrenton pike. Thus the gap in the line which McDowell's troops were to occupy remained open all the afternoon, and the margin of the timber remained in possession of the ememy's pickets.

These failures to connect or to communicate directly along the front were reported by Porter to McDowell by way of the Sudley Springs road, on which McDowell had gone. The reports were made in at least four different written dispatches, which have been preserved. The hour was named in only one, apparently the latest, sent at 6 o'clock in the evening. Two reports—one about 4 o'clock and the other about 6.30 p. m.—were sent to General Pope direct. Both of these were received by him, but have not been preserved.

About the time General McDowell arrived on the field at Porter's position, and for an hour or two thereafter, a heavy artillery combat was going on between the Union batteries near Groveton and the Confederate artillery. During this artillery combat, and until 5 o'clock p. m., there was no infantry engagement, except skirmishing and some short and sharp contests between small portions of the opposing forces, and until 6.30 p. m. no musketry was audible to any one in Porter's corps.

On the Confederate side, as it now appears, Porter's display of troops —three brigades in line—in the early part of the afternoon, had given rise to the expectation of an attack on their right. This having been reported to General Longstreet, that commander sent his reserve division (Wilcox's) from his extreme left, just north of the Warrenton turnpike, to his extreme right on the Manassas and Gainesville road. Wilcox reached this latter position about 4 o'clock p. m., and Porter having before that time withdrawn his troops under cover, some troops from the Confederate right (D. R. Jones') were pushed to the front in the woods occupied by Porter's skirmishers, apparently to reconnoiter. This movement gave rise to the impression among Porter's officers (Morell's division) that the enemy was about to attack about 5 p. m.

General Pope having arrived some time after noon, on the field in the rear of Groveton, and General McDowell's column approaching that part of the field by the Manassas and Sudley road, an attack was ordered upon the enemy's extreme left near Sudley, and a written order was sent, dated 4.30 p. m., to Porter to attack the enemy's right, and, if possible, his rear. After some time had elapsed, General Pope ordered McDowell, with King's division and other troops, to pursue up the Warrenton turnpike the enemy, who, thus to be assailed upon both flanks, would be compelled to retreat.

The attack on Jackson's left was begun by Kearney about 5 p. m.; but the order to Porter was not delivered in time. The messenger
1811 did not find General Porter until sunset. Thus, at 5 o'clock, nothing having occurred to suggest to General Porter any change in the plan indicated in the joint order to retire behind Bull Run instead of giving battle that day, the sound of artillery near Sudley, so much apparently to the rear of Groveton, suggested to Porter, who was then at Bethlehem Church, that Sigel was retiring or perhaps being driven back, and that his artillery was then in a new position near the Sudley Springs road.

If it was true that Sigel was being driven back, the military situation was extremely perilous, and Porter must instantly do what he could to avert disaster. His order to Morell, which must have been issued at that instant, shows what he proposed to do. It is as follows, viz:

GENERAL MORELL: Push over to the aid of Sigel and strike in his rear. If you reach a road up which King is moving,* and he has got ahead of you, let him pass; but see if you cannot give help to Sigel, If you find him retiring, move back toward Manassas, and, should necessity require it, and you do not hear from me, push to Centreville. If you find the direct road filled, take the one via Union Mills, which is to the right as you return.

F. J. PORTER,
Major-General.

Look to the points of the compass for Manassas.

F. J. PORTER.

This movement would have left Porter with Sykes alone to hold the Manassas road and cover the retreat of Ricketts' worn-out troops, who then were stretched along the road for four or five miles both toward Sudley and back toward Manassas Junction, while Morell should cover the retreat of the center of the army. But now, before Morell had time to commence this movement, came a report from him that the enemy was coming down in force to attack both his front and flank. Porter might in a few minutes have to meet the attack of twenty thousand men. The purpose to cover the retreat of Sigel must needs be abandoned. Hence Porter dispatched to Morell:

General MORELL: Hold on, if you can, to your present place. What is passing?
F. J. PORTER.

Again—

General MORELL: Tell me what is passing quickly. If the enemy is coming, hold to him and I will come up. Post your men to repulse him.

F. J. PORTER,
Major-General.

And again, in reply to advice from Morell that they had better retire, &c.: "We cannot retire while McDowell holds on."

Notwithstanding contradictory testimony, we believe it was at this time that Porter ordered Piatt's brigade, of Sturgis' command, about

*The Sudley road.

eight hundred men, to move back to Manassas Junction and take up a defensive position to cover the expected retreat.

General Porter reported to General McDowell his views and intentions in the following dispatches:

Generals McDowell and King: I found it impossible to communicate by crossing the woods to Groveton. The enemy are in great force on this road, and as they appear to have driven our forces back, the fire of the enemy having advanced, and ours retired, I have determined to withdraw to Manassas. I have attempted to communicate with McDowell and Sigel, but my messengers have run into the enemy. They have gathered artillery and cavalry and infantry, and the advancing masses of
1812 dust show the enemy coming in force. I am now going to the head of the column to see what is passing and how affairs are going and I will communicate with you. Had you not better send your train back?

F. J. PORTER,
Major-General.

General McDowell or King: I have been wandering over the woods and failed to get a communication to you. Tell how matters go with you. The enemy is in strong force in front of me, and I wish to know your designs for to-night. If left to me I shall have to retire for food and water, which I cannot get here. How goes the battle? It seems to go to our rear. The enemy are getting to our left.

F. J. PORTER,
Major-General Volunteers.

General McDowell: The firing on my right has so far retired that, as I cannot advance and have failed to get over to you, except by the route taken by King, I shall withdraw to Manassas. If you have anything to communicate, please do so. I have sent many messengers to you and General Sigel and get nothing.

F. J. PORTER,
Major-General.

An artillery duel is going on now; been skirmishing for a long time.

F. J. P.

General McDowell: Failed in getting Morell over to you. After wandering about the woods for a time I withdrew him, and while doing so artillery opened upon us. My scouts could not get through. Each one found the enemy between us, and I believe some have been captured. Infantry are also in front. I am trying to get a battery, but have not succeeded as yet. From the masses of dust on our left, and from reports of scouts, think the enemy are moving largely in that way. Please communicate the way this messenger came. I have no cavalry or messengers now. Please let me know your designs, whether you retire or not. I cannot get water and am out of provisions. Have lost a few men from infantry firing.

F. J. PORTER,
Major-General Volunteers.

Aug. 29—6 p. m.

But Porter soon found the sounds of artillery had deceived him. The renewal of the firing toward Groveton showed that Pope's troops were still there. Piatt's brigade was then recalled, and no further preparations for retreat were made.

Next came to Porter about 5.30 o'clock a report from the right that the enemy was in full retreat, and heavy sounds of musketry soon after showed that serious work had commenced near Groveton. Porter ordered Morell to make a strong reconnoissance to learn the truth. Morell knowing the report must be false, at least as to the enemy in his front, prepared to support this reconnoissance with his whole division. While this preparation was being made came the long delayed order, dated 4.30 p. m., to attack the enemy in flank or rear:

Headquarters in the Field,
August 29—4.30 p. m.

Major-General Porter: Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage

their flank. Keep heavy reserves and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

JOHN POPE,
Major-General Commanding.

This order, though dated at 4.30 p. m., was not received by Porter, at Bethlehem Church, before 6.30 p. m.

The evidence before the court-martial tending to show that Porter received the "4.30" order in time to execute it is found in the testimony of the officer who carried the order, and of one of the orderlies who
1813 accompanied him. Neither of these two witnesses appears to have carried a watch, and their several statements of the time when the order was delivered were based on estimates of the time occupied by them in riding from General Pope's headquarters to the place where they found General Porter. One of them at least knew from an inspection of the order that it was dated at 4.30; he, and probably both of them, therefore assumed that it was then that they started to deliver it, and adding to that hour the estimated time occupied by them, they severally fixed the hour of delivery. It is now proved by the testimony of the officer who wrote the dispatch that "4.30" was not the hour when the messenger started, but was the hour when he began to write the dispatch, and consequently that it was after that hour that the officer started to deliver it.

It is also shown that these messengers did not and could not, if other parts of their own testimony are true, have traveled over the route which they supposed they had taken. Moreover, it was proved by unquestionable testimony that since the court-martial trial one of these witnesses had made statements and admissions inconsistent with and contradictory of his former testimony, and the other witness confessed before us that recently he had deliberately made false statements in regard to the route taken while carrying the dispatch. We have therefore felt compelled to lay the testimony of these witnesses out of the case. An attempt was made to support these witnesses by the testimony of another person who, as it was alleged, also accompanied as an orderly the officer charged with the dispatch, but his testimony was so completely broken down by cross-examination that we regard it as entitled to no weight whatever.

On the other hand, the testimony of General Sykes, Lieutenant-Colonel Locke, Captain Montieth, Lieutenant Ingham, and Lieutenant Weld before the court-martial, that the order in question was not delivered until about sundown, either a little before or a little after that hour, has now been supported by a new and entirely independent witness, Captain Randol, and has been singularly confirmed by the production, for the first time, of the dispatch from Porter to McDowell, dated 6 p. m., the terms of which utterly forbid the supposition that at that time Porter had received the order.

The moment this order was received Porter sent his chief of staff, Colonel Locke, to General Morell with orders to make the attack at once. He then wrote and sent a reply to Pope, and immediately rode to the front. On his arrival there Morell had about completed his preparations for the attack under the previous order to make a reconnoissance, but darkness had already come on. It was evidently impossible to accomplish any good that night, for, even if Morell might have begun the attack before dark, Sykes could not have been got into line after the order was received. The contest at Groveton had already so far spent its force as to derive no possible aid from Morell's attack. The order was based upon conditions manifestly erroneous and directed what was impossible

to be done. To push Morell's division against the enemy in the dark would have been in no sense obedience to that order. Porter wisely ordered the preparations to cease, and the troops were put into position to pass the night, picketing in all directions, for Porter had but a few mounted men and the enemy had two thousand five hundred cavalry near his flank.

About this time, when darkness had come on, the rear of McDowell's column of weary troops was passing by the rear of Porter's column, still several miles from their destined place on the field. The Union Army was not even yet ready for battle.

The accompanying maps, marked Board Maps Nos. 2 and 3, 1814 exhibit substantially the military situation at the time the 4.30 p. m. order was issued and that which was then understood by General Pope to exist, as explained to the court-martial upon the trial of General Porter.

We believe this plain and simple narative of the events of the 29th of August clearly shows the true character of General Porter's conduct during that time. We are unable to find in that conduct anything subject to criticism, much less deserving of censure or condemnation.

Porter's duty that afternoon was too plain and simple to admit of discussion. It was to hold his position and cover the deployment of McDowell's troops until the latter, or some of them, should get into line; then to connect with them as far as might be necessary and practicable, and then, in the absence of further orders, to act in concert with those troops and others to the right.

If King's division had come up on the right, as was expected, and had advanced to attack, Porter would have known it instantly, and thus could have joined in the movement.

If the main army retired, as indicated in the joint order, it was Porter's duty to retire also, after having held his ground long enough to protect its left flank and to cover the retreat of Ricketts' troops.

Porter did for a moment entertain the purpose of trying to give aid to Sigel, who was supposed to be retiring before McDowell had got King's division up to his support. That was the nearest to making a mistake that Porter came that afternoon. But it soon enough became evident that such a purpose must be abandoned; Porter had quite his full share of responsibility where he was.

The preparations made for retreat were the ordinary soldierly dispositions to enable him to do promptly what he had good reason to expect he might be required to do at any moment and must do at nightfall.

He made frequent reports to his superiors, stating what he had done and what he had been unable to do; what his situation was in respect to the enemy in his front and the strength of the enemy there; what his impressions were from the sounds of action toward his right; how he had failed thus far to get any communications from any commander in the main army, or any orders from General Pope, asking McDowell, who was nearest to him, for such information and his (McDowell's) *designs for the night;* sending an aide-de-camp to General Pope for orders and receiving no reply, not even information that the 4.30 order had been sent to him, and, finally, informing his superiors that if left to himself, without orders, he would have to retire at night for food and water, which he could not get where he was. These reports were sent not only frequently, but early enough to insure the receipt of orders from Pope or correct information from McDowell, if they had any to send him, before it would be time for him to withdraw. All these dispatches were sent in the latter part of the afternoon. They all indicated a purpose to re-

tire only after being assured that the main army was retiring, and then to cover the retreat of the army as far as possible, or to withdraw after nightfall, as the joint order had indicated, if no further orders or information of General Pope's plans could be obtained.

There is no indication in any of those dispatches, when fairly construed, nor in anything which Porter did or said, of any intention to withdraw until after dark, unless compelled to do so by the retreat of the main army; and even then he was compelled to hold on until McDowell's troops could get out of the way, and that was not until after dark, for Ricketts' division was on the road in Porter's rear all the afternoon.

1815 It is perfectly clear that Porter had no thought whatever of retreating *from the enemy*, or of withdrawing because of the enemy in his front; for when the enemy was reported advancing as if to attack, his orders were: "If the enemy is coming, hold to him." "Post your troops to repulse him." "We cannot retire while McDowell holds on."

It appears to have been assumed in the condemnation of General Porter's conduct that he had some order to attack or some information of aggressive plans on the part of General Pope, or some intimation, suggestion, or direction to that effect from General McDowell, or that there was such a battle going on within his hearing, or something else in the military situation that required him to attack the enemy without orders before receiving the 4.30 p. m. order at sunset. All this was the exact reverse of the truth. General Pope's last order, General McDowell's directions while he was with General Porter, the military situation as then known to both Porter and McDowell, and the movement McDowell had decided to make to get his own troops into line of battle, and the state of the action on the right of the field, all combined to absolutely forbid any attack by Porter during that entire afternoon until he received Pope's order at sunset, and even that order could not possibly have been given if the situation had been correctly understood. An attack by him would have been a violation of the spirit of his orders, and a criminal blunder leading to inevitable disaster. In short, he had no choice as a faithful soldier but to do substantially what he did do.

The range of our investigation has not enabled us to ascertain the source of the great error which was committed in the testimony before General Porter's court-martial respecting the time of arrival of the main body of Lee's army on the field of Manassas. But the information which was in possession of the Union officers at noon of the 29th of August, and afterward published in their official reports, together with the testimony before the court-martial, affords clear, explicit, and convincing proof that the main body of that army must have been there on the field at that time.

The recent testimony of Confederate officers hardly adds anything to the conclusiveness of that proof, but rather diminishes its force by showing that one division (Anderson's) did not arrive until the next morning; while the information in their possession at that time required the Union officers to assume that that division as well as the others had arrived on the 29th. Yet General Porter's conduct was adjudged upon the assumption that not more than one division under Longstreet had arrived on the field, and that Porter had no considerable force in his front.

The fact is that Longstreet, with *four* divisions of full 25,000 men, was there on the field before Porter arrived with his two divisions of 9,000 men; that the Confederate general-in-chief was there in person at least two or three hours before the commander of the Army of Virginia himself arrived on the field, and that Porter, with his two divisions, saved

the Army of Virginia that day from the disaster naturally due to the enemy's earlier preparation for battle.

If the 4.30 order had been promptly delivered, a very grave responsibility would have devolved upon General Porter. The order was based upon conditions which were essentially erroneous, and upon expectations which could not possibly be realized.

It required an attack upon the enemy's flank or rear, which could not be made, and that the attacking force keep closed on Reynolds, who was far to the right and beyond reach. Yet it would have been too late to correct the error and have the order modified. That order appeared
1816 to be part of a general plan. It must be executed promptly or not at all. If Porter had made not the impossible attack which was ordered, but a direct attack upon the enemy's right wing, would he have been blameless for the fruitless sacrifice of his troops? We believe not. It is a well established military maxim that a corps commander is not justifiable in making an apparently hopeless attack in obedience to an order from a superior who is not on the spot, and who is evidently in error in respect to the essential conditions upon which the order is based. The duty of the corps commander in such a case is to make not a real attack, but a strong demonstration, so as to prevent the enemy in his front from sending re-enforcements to other parts of his line.

This is all that Porter would have been justifiable in doing, even if he had received the 4.30 order at 5 o'clock; and such a demonstration, or even a real attack made after 5 o'clock by Porter alone, could have had no beneficial effect whatever upon the general result. It would not have diminished in the least the resistance offered to the attacks made at other points that afternoon. The display of troops made by Porter earlier in the afternoon had all the desired and all possible beneficial effect. It caused Longstreet's reserve division to be sent to his extreme right in front of Porter's position. There that division remained until about 6 o'clock—too late for it to take any effective part in the operations at other points of the line.

A powerful and well-sustained attack by the combined forces of Porter's corps and King's division upon the enemy's right wing, if it had been commenced early in the afternoon, might have drawn to that part of the field so large a part of Longstreet's force as to have given Pope some chance of success against Jackson; but an attack by Porter alone could have been but an ineffective blow, destructive only to the force that made it, and, followed by a counter-attack, disastrous to the Union army. Such an attack, under such circumstances, would have been not only a great blunder, but, on the part of an intelligent officer, it would have been a great crime.

What General Porter actually did do, although his situation was by no means free from embarrassment and anxiety at the time, now seems to have been only the simple, necessary action which an intelligent soldier had no choice but to take. It is not possible that any court-martial could have condemned such conduct if it had been correctly understood. On the contrary, that conduct was obedient, subordinate, faithful, and judicious. It saved the Union army from disaster on the 29th of August.

This ends the transactions upon which were based the charges of which General Porter was pronounced guilty; but some account of the part taken by him and his corps in the events of the following day, August 30th, which gave rise to a charge which was withdrawn, is necessary to a full understanding of the merits of the case.

At 3 a. m. of the 30th, General Porter received the following order, and in compliance with it promptly withdrew from his position in presence of the enemy and marched rapidly by the Sudley road to the center of the battle-field, where he reported to General Pope for orders:

HEADQUARTERS ARMY OF VIRGINIA,
IN THE FIELD NEAR BULL RUN,
August 29, 1862—8.50 p. m.

GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are ex-
1817 pected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

JOHN POPE,
Major-General Commanding.

Major-General F. J. PORTER.
[Received August 30—3.30 a. m.]

At first sight it would appear that in this prompt and unhesitating movement, under this order, General Porter committed a grave fault. He was already on the field of battle confronting the enemy in force, and holding a position of vital importance to the security of Pope's army; while the latter appeared, from the order, to be wholly in the dark respecting these all-important facts. It is true the order was most positive, imperative, and also distrustful in its terms. But those very terms served to show only the more forcibly that the order was based upon a total misapprehension of the essential facts, without which misapprehension it would not seem possible that such an order could have been issued. The well-established military rule is that such an order must never be obeyed until the commander who gave it has been informed of his error and given an opportunity to correct it; but, upon close examination, the opposite view of Porter's conduct under this order appears to be the just one.

Porter had repeatedly reported to McDowell the presence of the enemy in large force in his front. Presumably these reports had gone to Pope, as one of them had in fact. Porter had also sent an aide-de-camp with a written message to Pope about 4 p. m., and had sent a written reply to the 4.30 p. m. order, after 6.30 p. m. These last two dispatches have not been preserved by General Pope, and hence their contents are not known to us; but we are bound to presume that they reported the situation as Porter then knew it, and as he had frequently reported it to McDowell, and the last of these dispatches, in reply to the 4.30 p. m. order, was later than the latest of those in which Porter had spoken of any intention to fall back. Hence, Porter had already given to his superior all the information which it was possible for him to give, and nothing remained for him but to obey the order. This movement of Porter's corps on the morning of the 30th was the beginning of the unfortunate operation of that day. This corps, which had been protecting the left flank of Pope's army, was withdrawn from its important position, leaving the left wing and flank exposed to attack by greatly superior force of the enemy, brought to the center of the field and then ordered "in pursuit of the enemy."

SPECIAL ORDER NO. —.

HEADQUARTERS NEAR GROVETON,
August 30, 1862—12 m.

The following forces will be immediately thrown forward in pursuit of the enemy and press him vigorously during the whole day. Major-General McDowell is assigned to the command of the pursuit; Major-General Porter's corps will push for-

ward on the Warrenton turnpike, followed by the divisions of Brigadier-Generals King and Reynolds. The division of Brigadier-General Ricketts will pursue the Hay Market road, followed by the corps of Major-General Heintzelman. The necessary cavalry will be assigned to these columns by Major-General McDowell, to whom regular and frequent reports will be made. The general headquarters will be somewhere on the Warrenton turnpike.

By command of Major-General Pope:

GEO. D. RUGGLES,
Colonel and Chief of Staff.

HDQRS. THIRD CORPS, ARMY OF VIRGINIA,
August 30, 1862.

Major-General McDowell being charged with the advanced forces ordered to pursue the enemy, directs me to inform you that your corps will be followed immedi-
1818 ately by King's division, supported by Reynolds. Heintzelman with his corps, preceded by Ricketts' division, will move on your right, on the road from Sudley Springs to Hay Market. He is instructed to throw out skirmishers to the left, which is desirable you should join with your right. General McDowell's headquarters will be at the head of Reynolds' division, on the Warrenton road. Organize a strong advance to precede your command, and push on rapidly in pursuit of the enemy until you come in contact with him. Report frequently. Bayard's brigade will be ordered to report to you; push it well to the left as you advance.

Very respectfully, your obedient servant,

ED. SCHRIVER,
Colonel and Chief of Staff.

Major General PORTER,
Commanding, etc.

These orders led to an attack upon the Confederate left wing, Jackson's command, made mainly by Butterfield's and Barnes' brigades, of Morell's division, and by Sykes' division, which is described as follows by the Confederate generals:

[Extract from General Lee's report of operations of the Army of Northern Virginia, battle of Manassas.]

HDQRS. ARMY OF NORTHERN VIRGINIA, *March* 6, 1863.

SIR: * * About 3 p. m. the enemy, having massed his troops in front of General Jackson, advanced against his position in strong force. His front line pushed forward until engaged at close quarters by Jackson's troops, when its progress was checked, and a fierce and bloody struggle ensued. A second and third line, of great strength, moved up to support the first, but in doing so came within easy range of a position a little in advance of Longstreet's left. He immediately ordered up two batteries, and two others being thrown forward about the same time by Col. S. D. Lee, under their well-directed and destructive fire the supporting lines were broken and fell back in confusion. Their repeated efforts to rally were unavailing, and Jackson's troops being thus relieved from the pressure of overwhelming numbers, began to press steadily forward, driving the enemy before them. He retreated in confusion, suffering severely from our artillery, which advanced as he retired. General Longstreet, anticipating the order for a general advance, now threw his whole command against the Federal center and left. * * *

I have the honor to be, very respectfully, your obedient servant,

R. E. LEE, *General.*

General S. COOPER,
Adjutant and Inspector-General, Richmond, Va.

[Extract from the report of General James Longstreet, October 10, 1862.]

* * * During the day Colonel S. D. Lee with his reserve artillery placed in the position occupied the day previous by Colonel Walton, and engaged the enemy in a very severe artillery combat. The result was, as the day previous, a success. At 3.30 o'clock in the afternoon I rode to the front for the purpose of completing arrangements for making a diversion in favor of a flank movement then under contemplation. Just after reaching my front line I received a message for reinforcements for General Jackson, who was said to be severely pressed. From an eminence near by, one portion of the enemy's masses attacking General Jackson were immediately within my view and in easy range of batteries in that position. It gave me an advantage that I had not expected to have, and I made haste to use it. Two batteries were ordered for the

purpose, and one placed in position immediately and opened. Just as this fire began I received a message from the commanding general informing me of General Jackson's condition and his wants. As it was evident that the attack against General Jackson could not be continued ten minutes under the fire of these batteries, I made no movement with my troops.

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[Extract from report of General Jackson of operations from August 15 to September 5, 1862.]

HEADQUARTERS SECOND CORPS, A. N. V., *April* 27, 1863.

GENERAL: After some desultory skirmishing and heavy cannonading during the day, the Federal infantry, about 4 o'clock in the evening, moved from under
1819 cover of the wood and advanced in several lines, first engaging the right, but soon extending its attack to the center and left. In a few moments our entire line was engaged in a fierce and sanguinary struggle with the enemy. As one line was repulsed another took its place and pressed forward as if determined, by force of numbers and fury of assault, to drive us from our positions. So impetuous and well sustained were these onsets as to induce me to send to the commanding general for reinforcements; but the timely and gallant advance of General Longstreet on the right relieved my troops from the pressure of overwhelming numbers, and gave to these brave men the chances of a more equal conflict. As Longstreet pressed upon the right the Federal advance was checked, and soon a general advance of my whole line was ordered.

T. J. JACKSON,
Lieutenant-General.

Brigadier-General R. H. CHILTON,
A. A. A. General, Headquarters Department A. N. V.

As Longstreet's army pressed forward to strike Pope's exposed left wing and flank, Warren, with his little brigade, sprung into the gap and breasted the storm until but a handful of his brave men were left alive. Then Sykes, with his disciplined brigades, and Reynolds with his gallant Pennsylvania Reserves, seized the commanding ground in rear, and, like a rock, withstood the advance of the victorious enemy and saved the Union Army from rout.

Thus did this gallant corps nobly and amply vindicate the character of their trusted chief, and demonstrate to all the world that "disobedience of orders" and "misbehavior in the presence of the enemy" are crimes which could not possibly find place in the head or heart of him who thus commanded that corps.

These events of the 30th of August were excluded from the evidence before the court-martial that tried General Porter; but justice requires that they should be mentioned here as having an important bearing upon the question of animus which was so strongly dwelt upon in the review of Porter's case by the Judge-Advocate-General.

The foregoing is the simple history of the part taken by Porter and his corps in the events which gave rise to the following charges and specifications, findings and sentence, and executive action:

GENERAL ORDERS NO. 18.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 22, 1863.

I. Before a general court-martial which convened in the city of Washington, D. C., November 27, 1862, pursuant to Special Orders No. 362, dated Headquarters of the Army, November 25, 1862, and of which Major-General D. Hunter, U. S. Volunteers, is president, was arraigned and tried Major-General Fitz-John Porter, U. S. Volunteers.

CHARGE I. "Violation of the 9th Article of War."

SPECIFICATION 1ST. "In this: that the said Major-General Fitz-John Porter, of the volunteers of the United States, having received a lawful order, on or about the 27th August, 1862, while at or near Warrenton Junction, in Virginia, from Major-General John Pope, his superior and commanding officer, in the following figures and letters, to wit:

'HEADQUARTERS ARMY OF VIRGINIA,
'*August* 27, 1862—6.30 p. m., Bristoe Station.

'GENERAL: The major-general commanding directs that you start at one o'clock to-night and come forward with your whole corps, or such part of it as is with you, so as to be here by daylight to-morrow morning. Hooker has had a very severe action with the enemy, with a loss of about three hundred killed and wounded. The enemy has been driven back, but is retiring along the railroad. We must drive him from Manassas and clear the country between that place and Gainesville, where McDowell is. If Morell has not joined you, send word to him to push forward immediately; also send word to Banks to hurry forward with all speed to take your place at Warrenton Junction. It is necessary, on all accounts, that you should be here by daylight. I send an officer with this dispatch, who will conduct you to this place.
1820 Be sure to send word to Banks, who is on the road from Fayetteville, probably in the direction of Bealeton. Say to Banks, also, that he had best run back the railroad train to this side of Cedar Run. If he is not with you, write him to that effect.

'By command of Major-General Pope.

'GEO. D. RUGGLES,
'*Colonel and Chief of Staff.*

'Major-General F. J. PORTER, *Warrenton Junction.*

'P. S.—If Banks is not at Warrenton Junction, leave a regiment of infantry and two pieces of artillery as a guard till he comes up, with instructions to follow you immediately. If Banks is not at the Junction instruct Colonel Clary to run the trains back to this side of Cedar Run, and post a regiment and section of artillery with it.

'By command of Major-General Pope.

'GEO. D. RUGGLES,
'*Colonel and Chief of Staff.*'

Did then and there disobey the said order, being at the time in the face of the enemy. This at or near Warrenton, in the State of Virginia, on or about the 28th of August, 1862."

SPECIFICATION 2D.—"In this: that the said Major-General Fitz-John Porter, being in front of the enemy, at Manassas, Virginia, on or about the morning of August 29, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

'HEADQUARTERS ARMY OF VIRGINIA,
'*Centreville, August* 29, 1862.

'You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are moving on the Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies. I have sent no orders of any description to Ricketts, and none to interfere in any way with the movements of McDowell's troops, except what I sent by his aide-de-camp last night, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, as I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts and instruct him to join the other divisions of his corps as soon as practicable. If any considerable advantages are to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or the next day. My own headquarters will for the present be with Heintzelman's corps, or at this place.

'JOHN POPE,
'*Major-General Commanding.*

'Generals MCDOWELL and PORTER.'

Which order the said Major-General Porter did then and there disobey. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862."

SPECIFICATION 3D.—"In this: that the said Major-General Fitz-John Porter, having been in front of the enemy during the battle of Manassas, on Friday, the 29th of August, 1862, did on that day receive from Major-General John Pope, his superior and commanding officer, a lawful order, in the following letters and figures, to wit:

'HEADQUARTERS IN THE FIELD, *August* 29, 1862—4.30 p. m.

'Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

'JOHN POPE,
'*Major-General, Commanding.*

'Major-General PORTER.'

1821 Which said order the said Major-General Porter did then and there disobey, and did fail to push forward his forces into action either on the enemy's flank or rear, and in all other respects did fail to obey said order. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862."

SPECIFICATION 4TH.—"In that the said Major-General Fitz-John Porter, being at or near Manassas Junction on the night of 29th August, 1862, did receive from Major-General John Pope, his superior and commanding officer, a lawful order, in figures and words as follows, to wit:

'HEADQUARTERS ARMY VIRGINIA, IN THE FIELD NEAR BULL RUN,
'*August* 29, 1862—8.50 p. m.

'GENERAL: Immediately upon receipt of this order, the precise hour of receiving which you will acknowledge, you will march your command to the field of battle of to-day, and report to me in person for orders. You are to understand that you are expected to comply strictly with this order, and to be present on the field within three hours after its reception, or after daybreak to-morrow morning.

'JOHN POPE,
'*Major-General, Commanding.*

'Major-General F. J. PORTER.'

And the said Major-General Fitz-John Porter did then and there disobey the said order, and did permit one of the brigadiers of his command to march to Centreville—out of the way of the field of battle—and there to remain during the entire day of Saturday, the 30th of August. This at or near Manassas Station, in the State of Virginia, on the 29th and 30th days of August, 1862."

SPECIFICATION 5TH.—"In this: that the said Major-General Fitz-John Porter, being at or near Manassas Station, in the State of Virginia, on the night of the 29th August, 1862, and having received from his superior commanding officer, Major-General John Pope, the lawful order set forth in specification fourth to this charge, did then and there disobey the same, and did permit one other brigade attached to his command—being the brigade commanded by Brigadier-General A. S. Piatt—to march to Centreville, and did thereby greatly delay the arrival of the said General Piatt's brigade on the field of the battle of Manassas, on Saturday, the 30th August, 1862. This at or near Manassas, in the State of Virginia, on or about the 29th day of August, 1862."

CHARGE II.—"Violation of the 52d Article of War."

SPECIFICATION 1ST.—"In this: that the said Major-General Fitz-John Porter, during the battle of Manassas, on Friday, the 29th August, 1862, and while within sight of the field and in full hearing of its artillery, did receive from Major-General John Pope, his superior and commanding officer, a lawful order to attack the enemy, in the following figures and letters, to wit:

'HEADQUARTERS IN THE FIELD, *August* 29, 1862—4.30 p. m.

'Your line of march brings you in on the enemy's right flank. I desire you to push forward into action at once on the enemy's flank, and, if possible, on his rear, keeping your right in communication with General Reynolds. The enemy is massed in the woods in front of us, but can be shelled out as soon as you engage their flank. Keep heavy reserves, and use your batteries, keeping well closed to your right all the time. In case you are obliged to fall back, do so to your right and rear, so as to keep you in close communication with the right wing.

'JOHN POPE,
'*Major-General, Commanding.*

'Major-General PORTER.'

Which said order the said Major-General Porter did then and there shamefully disobey, and did retreat from advancing forces of the enemy without any attempt to engage them, or to aid the troops who were already fighting greatly superior numbers, and were relying on the flank attack he was thus ordered to make to secure a decisive victory and to capture the enemy's army, a result which must have followed from said flank attack had it been made by the said General Porter in compliance with the said order which he so shamefully disobeyed. This at or near Manassas, in the State of Virginia, on or about the 29th of August, 1862."

SPECIFICATION 2D.—"In this: that the said Major-General Fitz-John Porter, being with his army corps on Friday, the 29th August, 1862, between Manassas Station and the field of battle then pending between the forces of the United States and those of the rebels, and within sound of the guns and in the presence of the enemy, and knowing that a severe action of great consequence was being fought, and that the aid of his corps was greatly needed, did fail all day to bring it on to the field, and did shamefully fall back and retreat from the advance of the enemy without any attempt to give them battle, and without knowing the forces from which he shamefully retreated. This near Manassas Station, in the State of Virginia, on the 29th of August, 1862."

1822

SPECIFICATION 3D.—"In that the said Major-General Fitz-John Porter, being with his army corps near the field of battle of Manassas on the 29th of August, 1862, while a severe action was being fought by the troops of Major-General Pope's command, and being in the belief that the troops of the said General Pope were sustaining defeat and retiring from the field, did shamefully fail to go to the aid of the said troops and general, and did shamefully retreat away, and did fall back with his army to the Manassas Junction, and leave to the disasters of a presumed defeat the said army; and did fail, by any attempt to attack the enemy, to aid in averting the misfortune of a disaster that would have endangered the safety of the capital of the country. This at or near Manassas Station, in the State of Virginia, on the 29th day of August, 1862."

SPECIFICATION 4TH.—"In this: that the said Major-General Fitz-John Porter, on the field of battle of Manassas, on Saturday, the 30th August, 1862, having received a lawful order from his superior officer and commanding general, Major-General John Pope, to engage the enemy's lines, and to carry a position near their centre, and to take an annoying battery there posted, did proceed in the execution of that order with unnecessary slowness, and by delays give the enemy opportunities to watch and know his movements, and to prepare to meet his attack; and did finally so feebly fall upon the enemy's lines as to make little or no impression on the same, and did fall back and draw away his forces unnecessarily, and without making any of the great personal efforts to rally his troops or to keep their lines, or to inspire his troops to meet the sacrifices and to make the resistance demanded by the importance of his position, and the momentous consequences and disasters of a retreat at so critical a juncture of the day."

To which charges and specifications the accused, Major-General Fitz-John Porter, United States Volunteers, pleaded as follows:

CHARGE I.

To specification 1st, "Not guilty."
To specification 2d, "Not guilty."
To specification 3d, "Not guilty."
To specification 4th, "Not guilty."
To specification 5th, "Not guilty."
And to the charge, "Not guilty."

CHARGE II.

To specification 1st, "Not guilty."
To specification 2d, "Not guilty."
To specification 3d, "Not guilty."
And to the charge, "Not guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, Major-General Fitz-John Porter, of United States Volunteers, as follows:

CHARGE I.

Of the 1st specification, "Guilty."
Of the 2d specification, "Guilty."
Of the 3d specification, "Guilty."
Of the 4th specification, "Not guilty."
Of the 5th specification, "Not guilty."
Of the charge, "Guilty."

CHARGE II.—Of the 1st specification, "Guilty, except so much of the specification as implies that he, the accused, 'did retreat from advancing forces of the enemy,' after the receipt of the order set forth in said specification." Of the 2d specification, "Guilty." Of the third specification, "Guilty, except the words, 'to the Manassas Junction.'" Of the charge, "Guilty."

SENTENCE.

And the court does therefore sentence him, Major-General Fitz-John Porter, of the United States Volunteers, "*to be cashiered, and to be forever disqualified from holding any office of trust or profit under the Government of the United States.*"

1823 II. In compliance with the 65th of the Rules and Articles of War, the whole proceedings of the general court-martial in the foregoing case have been transmitted to the Secretary of War, and by him laid before the President of the United States.

The following are the orders of the President: "The foregoing proceedings, findings, and sentence in the foregoing case of Major-General Fitz-John Porter are approved and confirmed; and it is ordered that the said Fitz-John Porter be, and hereby is, cashiered and dismissed from the service of the United States as a major-general of volunteers, and as colonel and brevet brigadier-general in the regular service of the United States, and forever disqualified from holding any office of trust or profit under the Government of the United States.

"January 21, 1863." ABRAHAM LINCOLN.

III. The general court-martial, of which Major-General Hunter is president, is hereby dissolved.

By order of the Secretary of War.

L. THOMAS, *Adjutant-General.*

Official:
Assistant Adjutant-General.

These charges and specifications certainly bear no discernible resemblance to the facts of the case as now established. Yet it has been our duty to carefully compare with these facts the views entertained by the court martial, as shown in the findings and in the review of the case which was prepared for the information of the President by the Judge-Advocate-General who had conducted the prosecution, and thus to clearly perceive every error into which the court-martial was led. We trust it is not necessary for us to submit in detail the results of this comparison, and that it will be sufficient for us to point out the fundamental errors, and to say that all the essential facts in every instance stand out in clear and absolute contrast to those supposed facts upon which General Porter was adjudged guilty.

The fundamental errors upon which the conviction of General Porter depended may be summed up in few words. It was maintained, and apparently established to the satisfaction of the court-martial, that only about one-half of the Confederate army was on the field of Manassas on the 29th of August, while General Lee, with the other half, was still beyond the Bull-Run Mountains; that General Pope's army, exclusive of Porter's corps, was engaged in a severe and nearly equal contest with the enemy, and only needed the aid of a flank attack which Porter was expected to make to insure the defeat and destruction or capture of the Confederate force in their front under General Jackson; that McDowell

and Porter, with their joint forces, Porter's leading, had advanced towards Gainesville until the head of their column had reached a point near the Warrenton turnpike, where they found a division of Confederate troops, "seventeen regiments," which Buford had counted as they passed through Gainesville, marching along the road across Porter's front, and going toward the field of battle at Groveton; that McDowell ordered Porter to at once attack that column thus moving to join Jackson, or the flank and rear of the line if they had formed in line, while he would take his own troops by the Sudley Springs road and throw them upon the enemy's center near Groveton; that Porter, McDowell having then separated from him, disobeyed that order to attack, allowed that division of the enemy's troops to pass him unmolested, and then fell back and retreated toward Manassas Junction; that Porter then remained in the rear all the afternoon, listening to the sounds of battle and coolly contemplating a presumed defeat of his comrades on the center and right of the field; that this division of the enemy having passed Porter's column and formed on the right of Jackson's line, near Groveton, an order was sent to Porter to attack the right flank or rear of the enemy's line, upon which his own line of march must bring him, but that he had willfully disobeyed, and made no attempt to execute that
1824 order; that in this way was lost the opportunity to destroy Jackson's detached force before the other wing of General Lee's army could join it, and that this junction having been effected during the night of the 29th, the defeat of General Pope's army on the 30th thus resulted from General Porter's neglect and disobedience.

Now, in contrast to these fundamental errors, the following all-important facts are fully established:

As Porter was advancing toward Gainesville, and while yet nearly four miles from that place and more than two miles from the nearest point of the Warrenton turnpike, he met the right wing of the Confederate army, twenty-five thousand strong, which had arrived on the field that morning and was already in line of battle. Not being at that moment quite fully informed of the enemy's movements, and being then under orders from Pope to push rapidly toward Gainesville, Porter was pressing forward to attack the enemy in his front, when McDowell arrived on the field with later information of the enemy, and later and very different orders from Pope, assumed the command, and arrested Porter's advance. This latter information left no room for doubt that the main body of Lee's army was already on the field and far in advance of Pope's army in preparation for battle. General McDowell promptly decided not to attempt to go further to the front, but to deploy his column so as to form line in connection with General Pope's right wing, which was then engaged with Jackson. To do this General McDowell separated his corps entirely from General Porter's, and thus relinquished the command and all right to the command of Porter's corps. McDowell did not give Porter any order to attack, nor did he give him any order whatever to govern his action after their separation.

It does not appear from the testimony that he conveyed to General Porter in any way the erroneous view of the military situation which was afterward maintained before the court-martial, nor that he suggested to General Porter any expectation that he would make an attack. On the contrary, the testimony of all the witnesses as to what was actually said and done; the information which McDowell and Porter then had respecting the enemy, and the movement which McDowell decided to make, and did make, with his own troops, prove conclusively that there was left no room for doubt in Porter's mind that his duty was to

stand on the defensive and hold his position until McDowell's movement could be completed. It would have indicated a great error of military judgment to have done or ordered the contrary, in the situation as then fully known to both McDowell and Porter.

General Pope appears from his orders and from his testimony to have been at that time wholly ignorant of the true situation. He had disapproved of the sending of Ricketts to Thoroughfare Gap to meet Longstreet on the 28th, believing that the main body of Lee's army could not reach the field of Manassas before the night of the 30th. Hence, he sent the order to Porter dated 4.30 p. m. to attack Jackson's right flank or rear. Fortunately that order did not reach Porter until about sunset—too late for any attack to be made. Any attack which Porter could have made at any time that afternoon must necessarily have been fruitless of any good result. Porter's faithful, subordinate, and intelligent conduct that afternoon saved the Union Army from the defeat which would otherwise have resulted that day from the enemy's more speedy concentration. The only seriously critical period of that campaign, viz, between 11 a. m. and sunset of August 29, was thus safely passed. Porter had understood and appreciated the military situation, and, so far as he had acted upon his own judgment, his action had been wise and judicious. For the disaster of the succeeding day he was in no degree
1825 responsible. Whoever else may have been responsible, it did not flow from any action or inaction of his.

The judgment of the court-martial upon General Porter's conduct was evidently based upon greatly erroneous impressions, not only respecting what that conduct really was and the orders under which he was acting, but also respecting all the circumstances under which he acted. Especially was this true in respect to the character of the battle of the 29th of August. That battle consisted of a number of sharp and gallant combats between small portions of the opposing forces. Those combats were of short duration and were separated by long intervals of simple skirmishing and artillery duels. Until after 6 o'clock only a small part of the troops on either side were engaged at any time during the afternoon. Then, about sunset, one additional division on each side was engaged near Groveton. The musketry of that last contest and the yells of the Confederate troops about dark were distinctly heard by the officers of Porter's corps; but at no other time during all that afternoon was the volume of musketry such that it could be heard at the position of Porter's troops. No sound but that of artillery was heard by them during all those hours when Porter was understood by the court-martial to have been listening to the sounds of a furious battle raging immediately to his right. And those sounds of artillery were by no means such as to indicate a general battle.

The reports of the 29th and those of the 30th of August have somehow been strangely confounded with each other. Even the Confederate reports have, since the termination of the war, been similarly misconstrued. Those of the 30th have been misquoted as referring to the 29th, thus to prove that a furious battle was going on while Porter was comparatively inactive on the 29th. The fierce and gallant struggle of his own troops on the 30th has thus been used to sustain the original error under which he was condemned. General Porter was, in effect, condemned for not having taken any part in his own battle. Such was the error upon which General Porter was pronounced guilty of the most shameful crime known among soldiers. We believe not one among all the gallant soldiers on that bloody field was less deserving of such condemnation than he.

The evidence of bad animus in Porter's case ceases to be material in view of the evidence of his soldierly and faithful conduct. But it is our duty to say that the indiscreet and unkind terms in which General Porter expressed his distrust of the capacity of his superior commander cannot be defended. And to that indiscretion was due, in very great measure, the misinterpretation of both his motives and his conduct and his consequent condemnation.

Having thus given the reasons for our conclusions, we have the honor to report, in accordance with the President's order, that, in our opinion, justice requires at his hands such action as may be necessary to annul and set aside the findings and sentence of the court-martial in the case of Major-General Fitz-John Porter, and to restore him to the positions of which that sentence deprived him—such restoration to take effect from the date of his dismissal from the service.

Very respectfully, your obedient servants,

J. M. SCHOFIELD,
Major-General U. S. Army.
ALFRED H. TERRY,
Brigadier-General U. S. Army.
GEO. W. GETTY,
Brevet Major-General U. S. Army, Colonel 3d Artillery.

1827

EXHIBITS.

"A."

119 LIBERTY ST., NEW YORK, *June* 27, 1878.

Gen. J. M. SCOFIELD, *President, &c. :*

GENERAL: In order to the preventing of delay in the opening of the Board appointed to examine my case, I desire to inform you that I shall be fully prepared for the business of the Board at an early hour on the 20th inst.

The omission of the hour from the order leaves me in ignorance of the exact time of your sitting, which I hope may be communicated to me.

I respectfully ask that I may have the privilege of appearing by counsel, and that they may be allowed to make some suggestions as to the rules of procedure to be adopted.

The counsel I have selected are John C. Bullitt, esq., of Philadelphia; Joseph H. Choate, esq., and Anson Maltby, esq., of New York.

By their advice I now address you with the view of expediting a full and fair exposition of the facts of my case in the manner and at the times most suiting to your convenience, and also to accommodate as far as may be possible the witnesses and counsel connected with the examination.

I remain, yours, respectfully,

FITZ-JOHN PORTER.

EXTRACTS FROM THE OFFICIAL REPORT OF MAJOR-GENERAL IRVIN McDOWELL TO MAJOR-GENERAL JOHN POPE, LATE COMMANDING ARMY OF VIRGINIA.

WASHINGTON, D. C., *November* 6, 1862.

GENERAL: The rapid succession of events, forced marches, separation from books and papers, and other circumstances attending the late campaign of the Army of Virginia were such as made it impracticable for me to make, from time to time, detailed reports of the part taken in it by the Third Army Corps; and as, immediately after the end of the campaign, the corps was sent under another commander on active service into Maryland, and several of the officers commanding divisions and brigades became disabled there, I am still without many of the principal reports and returns which are necessary to make my report as full as it should be. It may, therefore, be

found incomplete in some parts, and to comprise much which should have been made the subject of separate reports.

In the movements of the Army of Virginia, made, I presume, for the purpose of drawing on it the enemy's army from Richmond, and then of holding that army in check till a junction could be effected by our forces with the troops from the Peninsula, the Third Army Corps consisted, in the first place, of King's and Ricketts' divisions and Bayard's cavalry brigade.

* * * * *

The entire corps, with the exception of a small party thrown in advance at the head of the bridge, now occupied the left or north bank of the Rappahannock, with General Sigel's corps on the right, General Banks' corps partly in reserve and partly on the left, and Reno's corps below us, at Kelley's Ford, and Reynolds' division, formerly under my command, and which it was soon to rejoin, coming up the river from Fredericksburg.

* * * * * * *

On the supposition the enemy might offer us battle at or near Warrenton, upon which he could now concentrate a large force, you informed me in your telegram of the 26th that the corps on my left and rear would all be pushed forward, so as to be within supporting distance of the Third Corps. The information, however, received in the evening and night from General Buford, from General Sigel's scouts, and from some negroes, was to the effect that the enemy's column, whose rear division we had been fighting at Sulphur Springs, was directed upon Thoroughfare Gap,
1828 through which his advance had passed, to attack our communications at Manassas. Copies of the telegrams to and from your headquarters concerning the supposed designs of the enemy are herewith, marked.*

You then decided to throw the army back on the forces of the enemy which had passed through the Piedmont Ridge at Thoroughfare Gap, and agreeably to your order of 8.30 a. m. of the 27th (and not as stated in General Sigel's proposal), I gave the latter, who, as we were to march to the rear, was now in front, the following order:

"Push immediately a strong advance along the turnpike from Warrenton to Gainesville, for the purpose of taking possession of Buckland Mills, on Broad Run, and get your corps in hand as soon as possible to follow the advance. No wagons, but for ammunition, will accompany your corps on this road. Your baggage-trains will immediately proceed to Catlett's. Detach three batteries from your corps to report to Major-General Kearney, commanding division, who will be moving by way of Greenwich to your support. Further instructions will be given as to the route by which the batteries are to join General Kearney, and until they do they will remain with you."

I gave General Sigel the cavalry of my corps in place of his own, which had been detached by your order, and informed him that Reynolds, King, and Ricketts' divisions would immediately follow him,† and that as soon as they closed upon him he should push his advance to Gainesville, the point where the Warrenton turnpike to Centreville and Alexandria was crossed by the road from Thoroughfare Gap to Manassas Junction.

The divisions of Reynolds, King, and Ricketts, in the order named, followed as soon as they could be brought on. As there was but one road for all these troops to march over, stringent orders were given that all wagons not required for ammunition should be sent to the lower road, so as to leave this one as unincumbered as possible for the passage of the troops. So far as the Third Corps was concerned, this order, with inconsiderable exceptions, mostly in Reynolds' division, was obeyed.

General Sigel succeeded in reaching Buckland Mills in time to save the bridge which I had had made over Broad Run at that place, and had pushed on his advance to Gainesville, as ordered, and that night the three divisions of the corps closed up with him.

Buford, who had been indefatigable on this, as on every other occasion during the campaign, sent in word from our extreme left (our former right) that he had cut the enemy's column and forced Longstreet to deploy between Salem and White Plains.

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*See Appendix.

† HEADQUARTERS THIRD ARMY CORPS, ARMY OF VIRGINIA,
August 27, 1862.

GENERAL: I have just received your note of 12½ p. m. In default of your cavalry, which is not yet returned, I send you this morning General Bayard, with three regiments; when yours return please send him back to me. I will send word to Catlett's about your regimental provision wagons. Brigadier-General Reynolds' division is immediately behind you; King and Ricketts' follow.

Very respectfully, your obedient servant,

IRVIN McDOWELL, *Major-General.*

SIGEL,
Major-General Commanding First Corps.

Duffie's Rhode Island cavalry was sent up to watch the road between White Plains and Thoroughfare, to see that the enemy should not fall on the rear of our column unawares.

The night of the 27th I saw General Sigel at Buckland Mills, and informed him that Longstreet would be coming through the Gap next morning, and that, as the head of his corps (Sigel's) was now on the road leading from the Gap to Manassas Junction, I would give him one of my divisions (a third of my force) and charge him with the duty of marching to Haymarket, watching the Gap, and engaging the forces when they came through, whilst I would take the remainder of my force and go against those who had already passed. I sent word to you of this at Bristoe. But whilst the preparations were being made to carry it out, I received your order, dated Bristoe, August 27, 9 o'clock p. m., as follows:

"At daylight, to-morrow morning, march rapidly on Manassas Junction with your whole force, resting your right on the Manassas Gap Railroad, throwing your left well to the east. Jackson, Ewell, and A. P. Hill are between Gainesville and Manassas Junction. We had a severe fight with them to-day, driving them back several miles, along the railroad. If you will march promptly and rapidly at the earliest dawn of day upon Manassas Junction, we shall bag the whole crowd. I have directed Reno to march from Greenwich at the same time upon Manassas Junction, and Kearney, who is in his rear, to march on Bristoe at daybreak. Be expeditious and the day is our own."

1829 I showed this order to General Sigel, and sent him a copy of my general order,*

HEADQUARTERS THIRD CORPS,
Reynolds' Camp, August 28, 1862.

1. Major-General Sigel will immediately march with his whole corps on Manassas Junction, his right resting on the Manassas Railroad.

2. Brigadier-General Reynolds will march on the turnpike, immediately in the rear of General Sigel, and form his division on the left of General Sigel, and march upon Manassas Junction.

3. Brigadier-General King will follow immediately after General Reynolds, and form his division on General Reynolds' left, and direct his march on Manassas Junction.

4. Brigadier-General Ricketts will follow Brigadier-General King and march to Gainesville; and if on arriving there no indication shall appear of the approach of the enemy from Thoroughfare Gap, he will continue his march along the turnpike, form on the left of General King, and march on Manassas Junction. He will be constantly on the lookout for an attack from the direction of Thoroughfare Gap, and in case one is threatened, he will form his division to the left and march to resist it.

The headquarters of the corps will be at King's division.

By command of Major-General McDowell.

the receipt of which he acknowledged at 2½ a. m. on the 28th. My order required all the forces to march immediately. His advanced division was already at Gainesville, and he had to close his command upon it and march as ordered. I endeavored, by every exertion of myself and staff, to get the force forward as early as you had indicated, and, so far as the Third Corps was concerned, worn as the division were by the marching and countermarching of the day previous up to a late hour in the night, which had prevented many of the regiments from obtaining their supplies, there was no difficulty. They were ready, and marched forward with alacrity, though many of the regiments had barely finished the march of the day before. But General Sigel's rear division was so long getting out of its bivouac that Reynolds' division, after waiting some time, had to pass the larger part of it; and General Sigel's corps, instead of complying fully with my orders at Warrenton that all wagons not carrying ammunition should go by the way of Catlett's, had brought with them nearly two hundred, which encumbered the road and embarrassed our movements seriously, and when all the divisions were closed up, instead of a rapid march, everything came to a stand.

At seven and a half o'clock I received a message from General Reynolds, who was at the head of the Third Corps, that General Sigel was halting on the road at the junction of the railroad (Gainesville), and was making no preparations to advance, or to organize, or form his line, and that his men had built fires to cook their breakfast, and had blocked up the road so that he could not get forward. I sent my assistant adjutant-general to the head of the column to urge General Sigel to march immediately on Manassas Junction as ordered, but it was too late in the forenoon before the head of the corps passed him.

All the forces of the Army were now, by your orders, converging on Manassas, and had been moving till we crossed the railroad at Gainesville in the angle comprised between the Orange and Alexandria Railroad and the Manassas Railroad, which unite at Manassas Junction.

* [General Order No. 10.]

The troops under my command, the First and Third corps, were to cross the Manassas road at Gainesville, and move with the right on that road, the left well to the east.

General Sigel says in his report that he understood he was to have his right on the railroad leading from Warrenton Junction to Manassas Junction, the Orange and Alexandria Railroad, some six miles to the south of us. He saw your order to move with his right on the Manassas Railroad, and had my general order in writing to the same effect. When I arrived at Gainesville I found he had moved to the right, or south side, instead of to the left, or north side, of the Manassas road.

I varied from your orders to march with "my whole force" only so far as concerned General Ricketts' division and the cavalry of Buford and Bayard. Knowing that Longstreet would be coming through Thoroughfare I sent, early in the morning, Colonel Wyndham's First New Jersey Regiment of Cavalry to the gap, and sent up other cavalry as fast as I could get hold of it; and on receiving word the enemy was coming through, I detached Ricketts' division to hold him in check.

This departure from your orders, to move with "my whole force" on Manassas, I felt called upon to make, to carry out the *spirit* of your plan of crushing the enemy at that place before his re-enforcements, of whose position I had just received positive intelligence, could join, as those re-enforcements I thought could be better held in check at the gap than this side of it.

As soon as the Warrenton road was free, Reynolds' division pushed foward across the railroad, and after a short march the head of his column found itself opposed
1830 by the enemy with a battery of artillery posted on a hill. The attack commenced by the enemy as soon as we came in view caused Reynolds to deploy his column, to bring up his artillery, and send out his skirmishers. After a short engagement the enemy retired, so that when our skirmishers occupied the hill he left he was nowhere to be seen. Supposing, from the movements of this force, that it was some rear guard or cavalry party with artillery sent out to reconnoiter, the march of the division, after caring for the killed and wounded, was resumed, and it turned off to the south of the road to go to Manassas. General Sigel's getting so far to the south of Manassas Railroad left so wide a distance between him and the leading division of the corps (Reynolds') that King's division, which was to have gone to the left of Reynolds, was now brought between it and General Sigel's corps, and the march on Manassas resumed.

The country between the Warrenton turnpike and the Manassas Railroad, on which we were now marching, was unknown to us. It was partly in fields, but mostly in woods, across and through which we were going in the general direction ordered. It was now late in the afternoon, and I ascertained that the enemy were no longer at Manassas Junction; and soon after I received your dispatch* of 1.20 from that place, which must have been delayed on the way; for after giving the necessary orders to carry out your instructions, but before the troops had received them, your second dispatch† from Manassas was received, informing me that the enemy were on the other side of Bull Run on the Orange and Alexandria Railroad, as also near Centreville, and directing me to march with my command upon the latter place. King's division, which was nearest the Warrenton and Centreville turnpike, was ordered to march by that road, and Reynolds' division, which was near the Sudley Springs and Manassas

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* HEADQUARTERS ARMY OF VIRGINIA,
Manassas Junction, August 28, 1862—1.20 p. m.

Major-General McDOWELL: I sent you a dispatch a few minutes ago, directing you to move on Gum Spring to intercept Jackson. Since then I have received your note of this morning. I will, this evening, push forward Reno to Gainesville and follow with Heintzelman, unless there is a large force of the enemy at Centreville, which I do not believe. Ascertain if you can about this. I do not wish you to carry out the order to proceed to Gum Spring if you consider it too hazardous, but I will support you in any way you suggest by pushing forward from Manassas Junction across the turnpike. Jackson has a large train which should certainly be captured. Give me your views fully; you know the country much better than I do. Come no farther in this direction with your command, but call back what has advanced thus far.

JOHN POPE,
Major-General Commanding.

† HEADQUARTERS MANASSAS JUNCTION,
August 28—4.15 p. m.

Major-General McDOWELL: The enemy is reported in force on the other side of Bull Run on the Orange and Alexandria Railroad, as also near Centreville. I have ordered Sigel to march on Centreville immediately, as also Kearney and Reno. I will advance Hooker as reserve. Please march immediately with your command upon Centreville from where you are.

JOHN POPE,
Major-General Commanding.

road, was ordered to move by that road and thence by the Warrenton turnpike. After putting these divisions in motion and going with Reynolds' division to near Manassas, I proceeded to that place to confer personally with you. King's division moved along the Warrenton road and became engaged with the enemy, and at the same time Ricketts, some six or eight miles farther to the west, became engaged with Longstreet's corps as it attempted the passage of the defile at Thoroughfare Gap. I have as yet received no reports from King's division or from any of the brigade commanders. I cannot say, therefore, as to the engagement of Thursday, the 29th, but from verbal reports, I understand it to have been mostly an affair of General Gibbon's brigade, one of the finest in the army, and part of Doubleday's brigade, with some two brigades of the enemy, and that the troops behaved most creditably. The loss in Gibbon's brigade was severe in both men and officers. The gallant Colonel O'Connor, Second Wisconsin, and Major May, Nineteenth Indiana, killed; Colonel Cutler, Sixth Wisconsin, one of the best officers we have, badly wounded, and at the time reported dead; the gallant Colonel Robertson, Seventh Wisconsin, Major Allen, Second Wisconsin, Lieut. Col. Charles Hamilton, Seventh Wisconsin, and Major Bells, Seventh Wisconsin, wounded.

General Ricketts engaged the enemy until dark, holding him in check and forcing him back; but finding him crossing at Hopewell Gap, above and on his right, and threatened with being turned on his left, he withdrew at nightfall to Gainesville; and here learning from General King that he intended to fall back to Manassas at 1
1831 o'clock a. m. from the Warrenton road, General Ricketts did the same by the way of Bristoe, which gave him a long and fatiguing march.

Finding on my arrival there that you had left Manassas, I turned toward Reynolds' division but did not succeed in finding it—it being now dark—until daybreak next morning, on the hill by the Warrenton road, near Groveton. It was here I learned of the movements of King's and Ricketts' divisions of the night before.

Early in the morning of the 29th General Sigel, who had come up the night before from near Manassas, and who was on Reynolds' right, made demonstrations against the enemy, who seemed to be on the north of us. I directed Reynolds to support General Sigel on the left in the movements he might make, and then proceed to join Generals King's and Ricketts' divisions.

At Manassas I found Major-General Fitz-John Porter's corps coming up, and soon after, in answer partly to a message of mine, I received your order* of the 29th from Centreville, addressed jointly to General Porter and myself. In compliance with it, King's and Ricketts' divisions were directed, as soon as they could be placed on the road from Manassas Junction to Gainesville, which runs nearly west, to follow in the rear and close to General Porter's corps. Both these divisions had been on foot night and day for several days past, had marched most of the night before, and were separated from their baggage and subsistence. They moved forward, however, cheerfully. The column coming to a halt, I rode forward and found General Porter at the head of his corps on a slight eminence. In front was an open piece of ground, and beyond it the woods skirting the Warrenton road, down which, as we could see from the dust above the trees, the enemy was moving from Gainesville upon Groveton, where the battle was now going on.

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* HEADQUARTERS ARMY OF VIRGINIA.
Centreville, August 29, 1862.

Generals McDOWELL and PORTER: You will please move forward with your joint commands towards Gainesville. I sent General Porter written orders to that effect an hour and a half ago. Heintzelman, Sigel, and Reno are now moving at Warrenton turnpike, and must now be not far from Gainesville. I desire that as soon as communication is established between this force and your own, the whole command shall halt. It may be necessary to fall back behind Bull Run at Centreville to-night. I presume it will be so on account of our supplies.

I have sent no orders of any description to Ricketts, and none to interfere in any way with the movement of McDowell's troops, except what I sent by his aide-de-camp last, which were to hold his position on the Warrenton pike until the troops from here should fall on the enemy's flank and rear. I do not even know Ricketts' position, and I have not been able to find out where General McDowell was until a late hour this morning. General McDowell will take immediate steps to communicate with General Ricketts, and instruct him to rejoin the other divisions of his corps as soon as practicable. If any considerable advantage is to be gained by departing from this order, it will not be strictly carried out. One thing must be held in view: that the troops must occupy a position from which they can reach Bull Run by to-night or by morning. The indications are that the whole force of the enemy is moving in this direction at a pace that will bring them here by to-morrow night or next day. My own headquarters will be, for the present, with Heintzelman's corps at this place.

JOHN POPE,
Major-General Commanding.

Just before reaching General Porter I received a note from General Buford, commanding cavalry brigade, who was on our then left and front, acquainting me with the strength of the enemy, which he had seen as they passed through Gainesville, then moving down the road. It consisted of seventeen regiments, one battery, and five hundred cavalry. As this was an inferior force to General Porter's, I decided for him to throw himself at once on the enemy's flank, and as the head of my column was sure three miles back, near the Sudley Springs road, I would move it directly north on that road, upon the field, where the battle was then at its height. Under the authority they gave me I deviated from the letter of your instructions, for I thought in this way the forces could be soonest and best applied, and that by coming up on the left of the line, then actually engaged with the enemy, the best disposition would be effected, and the fixed point in your instructions, which was "that the troops should occupy a position from which they could reach Bull Run that night or the next morning," would be still fulfilled.

Leaving General Porter I returned to the head of my two divisions and turned them immediately north, on the Sudley Springs road, to the battle-ground, and, after seeing most of them off, I rode forward to the head of King's division, now commanded by Brigadier-General Hatch, General King, who had the misfortune to be struck down by a severe illness on the Rappahannock, but who had since tried to return to duty
1832 being at last forced to relinquish the command. I found General Hatch absent. He had gone, as I was told, to see General Sigel.

General Reynolds reports that in the mean time, after I had left him in the morning, he had, agreeably to my orders to support General Sigel in any movement the latter might make, formed his division on the left of General Schenck's, but the right of the enemy's position being discovered upon the heights above Groveton, on the right of the Warrenton turnpike, the division advanced in that direction, Cooper's battery, supported by Meade's brigade, coming gallantly into action on the same ridge on which the enemy's right was posted By some movement in General Sigel's corps, Reynolds' right becoming unsupported, and the enemy's whole fire being concentrated upon it, he was obliged to fall back.

Later in the day General Pope, arriving on the right of the line from Centreville, renewed the attack on the enemy, and drove him back some distance. General Reynolds was then directed to threaten the enemy's right and rear, which he proceeded to do under a heavy fire of artillery from the ridge to the left of the pike. Generals Seymour and Jackson led their brigades in advance, but, notwithstanding all the steadiness and courage of the men, they were compelled by the fire of the enemy's artillery and infantry on their front and left to resume their former position.

Immediately on my arrival with King's division I directed it to move forward and take place on the left of Reynolds, then still engaged on the left of Sigel's corps, and some of the brigades went forward to do so, when I received your instructions to order the division over to the north of the turnpike to support the line held by Reno, which had been hotly engaged all day, and the division was recalled and brought back to the Sudley Springs road for this purpose.

* * * * * * *

About the time the division arrived at the crossing of the Sudley Springs and Warrenton turnpike, I received word from you that the enemy were falling back, and to send the division right up the turnpike after them. It was now near dusk, and though the men had been on foot since one o'clock in the morning, they moved forward with the greatest enthusiasm. They were led gallantly up the road by Brigadier-General Hatch, who, trusting to find the enemy in retreat, as he was told, and hoping to turn their retreat into a flight, took the men forward, his own and Doubleday's brigades, and Gerrish's battery of howitzers, with Patrick's brigade in reserve, with an impetuosity akin to rashness. The attack was severe, both on the enemy and our men.

About the same time an attack was made by Bayard's cavalry, on the left of Hatch, on the enemy south of the road, in which Seymour's squadron suffered severely. These were the finishing strokes of the day, which we could now safely claim as ours.

The batteries of King's division, except Gerrish's, supported by Gibbon's brigade, had been sent to reinforce and relieve those on the ridge near Groveton. Ricketts' division coming on in the rear of King's, was taken up the Sudley Springs road, north of the Warrenton pike, and held as a reserve, for the time, in front.

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September 2d, in compliance with general orders, the corps fell back to Hall's and Upton's Hills, in front of Washington.

Here the campaign ended. If it had been short, it had been severe. Beginning with the retreat from Cedar Mountain, seldom has one army been asked to undergo more than our men performed. With scarcely a half day's intermission, the Third Corps was either making forced marches, many times through the night, and many times without food, &c., or were engaged in battle. These fatigues were most severe towards the last, when, on account of the movements of the enemy, we had to separate from our supplies, and many generals, as well as privates, had no food, or only such as

could be picked up in the orchards or cornfields along the road. In all this the patience and endurance and general good conduct of the men were admirable. To fight and retreat, and retreat and fight, in the face of a superior force, is a severe test of soldiership. This they did for fifteen days; and though many broke down under the fatigue and exposures, and many straggled from the ranks, the troops as a general thing behaved most creditably, and, even to their return to the lines in front of this place, though they were sad at seeing their numbers so much diminished by hardships and battles, which had availed them nothing, and were tired and reduced from marching and fasting, they preserved their discipline, and it is an abuse of words to say they were either demoralized or disorganized.

This report has been delayed so long, for the reasons mentioned at the commencement, that I now forward it without returns of the killed, wounded, and missing. I will supply this deficiency when all the returns are received.

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I have the honor to be, very respectfully, your most obedient servant,

IRVIN McDOWELL,
Major-General Com'd'g 3d Corps, Army of Virginia.

To Major-Gen'l JNO. POPE,
Commander of the late Army of Virginia.

1833 FROM APPENDIX TO GENERAL POPE'S REPORT.

WARRENTON JUNCTION, *August* 25, 1862—9.30 p. m.

I believe that the whole force of the enemy has marched for the Shenandoah Valley by way of Luray and Front Royal. The column which has marched to-day to Gaines' Cross-roads has turned north, and when last seen was passing under the east base of Buck Mountain towards Salem and Rectortown. I desire you, as early as possible in the morning, holding Reynolds in reserve at Warrenton or vicinity, to make a reconnaissance with your whole corps and ascertain what is beyond the river at Sulphur Springs. There is no force of the enemy between here and Culpeper, or at Culpeper. I send you a dispatch for General Sigel, which please read and send to him immediately. Communicate with me frequently by telegraph from Warrenton.

JOHN POPE,
Major-General Commanding.

Major-General McDOWELL,
Warrenton.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

[Received August 26, 1862, from headquarters Third Army Corps, 3.30 p. m., Warrenton.]

UNITED STATES MILITARY TELEGRAPH.

General Sigel's bridge-train has arrived. I think it may be useful. General Milroy burnt the bridge at Waterloo before he retired from that place last night, and Buford says the fords near Waterloo are bad. I have directed the available forces of Sigel's cavalry, with a section of his artillery, to report to General Buford this afternoon, on the Waterloo road, with three days' cooked rations. I have directed Buford to march at dawn to-morrow towards Chester Gap, to ascertain what direction the enemy has taken on our right, whether to Rectortown or Front Royal, through Chester Gap. He will either take the Carter Church road, up the left bank of Carter's Run, or the road direct from this place to Chester Gap, as inquiries to be made this afternoon shall determine. However persons may have differed as to the force at Waterloo, Sulphur Springs, or elsewhere, all agree in one thing—the movement of the enemy towards our right from Rappahannock to Waterloo. Battalions, trains, batteries, all have the same direction. The force of the enemy now seems to be above Sulphur Springs. Under these views, in addition to Sigel's corps, now here, I beg to suggest that Hooker and Kearney be marched at once in this direction, instead of the direction of Rappahannock Station; for whether we attack them or they attack us, the contest must come off, it seems to me, as things now stand, above rather than below Sulphur Springs. If they could make a march this afternoon towards either Sulphur Springs or Waterloo Bridge, it would be a movement, I think, in the right direction. What is the enemy's purpose is not easy to discover. Some have thought he means to march around our right through Rectortown to Washington; others think that he intends going down the Shenandoah, either through Thornton's or Chester Gap. Either of these operations seems to me too hazardous for him to undertake with us in his rear and flank. Others that it was his object to throw his trains around into the valley to draw his supplies from that direction, and have his front looking to the east rather

than to the north. It is also thought that whilst a portion of his force has marched up the immediate right bank of the Rappahannock, a larger portion has gone through Culpeper up the Sperryville road. No doubt these various suppositions may have occurred to you, but I have thought it not inappropriate to recapitulate them here with reference to concentrations of forces in this direction, which I have herein suggested. Cannonading at Sulphur Springs still continues about the same. I have ordered Buford to send you a regiment of cavalry. I cannot get hold of Bayard.

IRVIN McDOWELL.

I have just received your telegrams of 2.20 and 3.15 p. m. I trust that Buford's reconnaissance to-morrow will obtain the information you desire concerning the movements of the enemy across the Sperryville pike, in the direction of Gaines' Cross-roads and Salem. I also received from General Banks' signal officer the account of this movement. With reference to your inquiries as to what has occurred to make the presence of Cox here desirable, I made the suggestion, first, because in the general order issued he was ordered to join Sigel at Fayetteville. As Sigel was here, and as I understood Cox was arriving in the cars, I thought, if it could be done, time would be gained by his being landed here rather than at Warrenton Junction.

IRVIN McDOWELL,
Major-General Commanding.

Major-General POPE.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp

1834 [Received August 26, 1862, from near Waterloo Bridge, 3.45 p. m.]

UNITED STATES MILITARY TELEGRAPH

Trains and troops still passing over the same route. A deserter, just come in, says Longstreet's corps, embracing Anderson's, Joness', Kemper's, Whiting's, and Evans' divisions, are located in the woods back of Waterloo Bridge. Thinks Hill's division at Jefferson; Jackson's corps somewhere above Longstreet's. He appears truthful, and I credit his story. The entire district from Jefferson to Culpeper, Sperryville, and as far as Barber's, covered with smoke and lines of dust. The deserter reports the arrival last evening of the greater portion of Longstreet's corps at its present position.

JOHN S. CLARK,
Colonel and Aide-de-Camp.

General POPE.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

HEADQUARTERS THIRD CORPS,
Warrenton, August 26—9 p. m.

An intelligent negro has just come in to General Buford from White Plains, and reports the advance of the enemy at that place. He says he saw himself at White Plains to-day, at twelve o'clock, two batteries of artillery, two regiments of cavalry, four regiments of infantry, and that they were moving in the direction of Thoroughfare Gap. The man's story is evidently to be relied upon. General Buford says his statements are confirmed by his scouts, who report large trains passing up through Orleans to White Plains.

IRVIN McDOWELL,
Major-General.

Major-General POPE.

True copy.

JOHN POPE,
Major-General.

EXTRACTS FROM THE CLOSING ADDRESS OF MAJOR-GENERAL IRVIN McDOWELL, IN REVIEW OF THE EVIDENCE BEFORE THE COURT OF INQUIRY, INSTITUTED AT HIS REQUEST IN SPECIAL ORDER No. 353, HEADQUARTERS OF THE ARMY OF 1862.

WASHINGTON, *February* 9, 1863.

The unusual position I have occupied, seeking an investigation of so general a character as the one just concluded, whilst there were no charges against me, seems to require a few words of explanation, lest I shall be thought either to have unwarrantably taxed the public service with the time and cost of this court, or to have sought an inquiry into my conduct and character in a spirit of vain self-confidence and conceit.

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LONGSTREET AND THOROUGHFARE GAP.

The mountain ridge which runs to the east of north from Warrenton to the Potomac is quite continuous, but with narrow openings every few miles, called "gaps," through which pass the roads from the Potomac to the Blue Ridge. The first of these openings north of the one taken by the turnpike from Warrenton to Fairfax Court-House, Centreville, and Alexandria, is called Thoroughfare Gap. A few miles north of Thoroughfare Gap is Hopeville Gap; next comes Aldie Gap. The railroad from Front Royal to Manassas, and the country road from Salem and White Plains, in the Piedmont district, to Manassas, come through Thoroughfare Gap, and cross the Warrenton turnpike at Gainesville. There is also an east and west road through Hopeville Gap; and the Little River turnpike to Germantown, Fairfax Court-House, and Alexandria, goes through Aldie Gap.

In throwing back the right of the army along the Warrenton turnpike, General Sigel, who had fallen behind my corps at Warrenton, was under my command and in front in this retrograde movement, and reached Buckland Mills, with his advance three miles beyond, at Gainesville, on the afternoon and evening of the 27th. My corps and Reynolds' division followed and closed up with him that night, one of the divisions having marched from near Sulphur Springs, and the other from half-way between Warrenton and Waterloo.

1835 It was known to us by telegram from General Pope at Warrenton Junction that Jackson's corps had come through Thoroughfare Gap, and was at or near Manassas, and by a reconnaissance made by General Buford in the direction of Salem, that Longstreet was marching in the same direction after Jackson. It was in reference to what I did, or did not do, to prevent Longstreet's coming through this gap, or to delay his coming through, that General Sigel finds cause for censure.

General Sigel says (December 20), "In the first place, I do not believe that General McDowell did what he could, under the circumstances, to hinder General Longstreet to join General Jackson. I am not certain, but I believe that he left not a sufficient force at Thoroughfare Gap, or in the neighborhood, to prevent the enemy's troops to pass by this defile, which is very easy to defend."

He further states: "I believe that on the 28th, in the morning, one division should have been posted so as to hinder General Longstreet to pass either Thoroughfare Gap or Hay Market, if it was too late to occupy the Gap."

"I would," he continues, "have sent about ten thousand men, with the intention to retard the movements of General Longstreet. I do not believe that these troops are sufficient to fight them all day, but I think they were sufficient to retard his movements."

Being asked if he would, under the circumstances, "have considered that four brigades, sixteen regiments of infantry, twenty-four pieces of artillery, and two brigades of cavalry, in the aggregate between eleven and twelve thousand men, a sufficient provision to hold Longstreet in check," answers: "I would have regarded it as a sufficient provision if these troops were placed at the right point at the right time."

These extracts from his evidence show clearly what General Sigel thought should be, and thinks should have been, done in this case.

He also states: "I did not hear of any engagement near Hay Market and the Gap; this induces me to say I do not believe the necessary arrangements were made to hinder Longstreet from joining the army."

General Sigel acknowledges an interview to have taken place at Buckland Mills, on the night of the 27th, between himself and General McDowell, on the subject of what dispositions should be made for the ensuing day, and what troops should be left at Thoroughfare Gap.

As to this interview, being asked by General McDowell (December 24), "Does the witness remember what General McDowell said to him would be the dispositions for the succeeding day? Does he remember whether it was the witness's corps, or the

witness's corps with a division from General McDowell added to it, that General McDowell decided to leave for the defense of Thoroughfare Gap?—Answer. I do not know anything about that; at least it must have been so indefinitely said to me that I did not mind it.

"Q. What did General McDowell propose to witness at his headquarters concerning the defense of Thoroughfare Gap and holding the enemy in check at that point?—A. He did not make any definite proposition.

"Q. What were those opinions or expressions of General McDowell on that occasion with reference to the subject of holding the enemy in check at Thoroughfare Gap or this side of it?—A. Many different opinions were expressed by General McDowell. He was not sure whether a corps should be sent there or a division, or what corps or what division, and I, therefore, as I did not like to impress upon him my own judgment, I left it with him to decide and to order, and give me instructions.

"Q. When you left Buckland Mills on the morning of the 28th, did you or did you not know General McDowell had made any provision for meeting Longstreet at or this side of Thoroughfare Gap?—A. I did not know anything at all."

Judging from this testimony of General Sigel, any one would say he marched from Buckland Mills without knowing anything of General McDowell's arrangements for meeting the enemy the next day in the direction of Thoroughfare Gap.

Yet I shall show he knew that, in the first place, he himself was assigned to this duty, and that one of my divisions was to remain behind to support him; and, in the second place, that subsequently he knew this duty was assigned to Ricketts' division.

On both these points the court has the best proof, furnished by the testimony of General Sigel himself.

See the following order, introduced by General Sigel, and appended to the proceedings of January 7:

"HEADQUARTERS THIRD ARMY CORPS,
"*Buckland Mills, August 27*, 1862—11.30 p. m.

"It being understood that a large division of the enemy, under Longstreet, left Salem at 4 o'clock p. m. for the enemy's position in the direction of Manassas, through Thoroughfare Gap, and is now on the march, the following preliminary movements of the left wing of the Army will be immediately made:

"Major-General Sigel's corps will, without delay, be concentrated at or near
1836 Hay Market and Gainesville. A division of the Third Corps will be left at Buckland Mills to operate against the flanks of the enemy, or march to Hay Market, as shall be found most expedient. King's and Ricketts' divisions will march to Gainesville, and start at 2 o'clock a. m. to attack the enemy's position in the direction of Manassas. This attack will be supported under the provision of the general order from headquarters of the Army of Virginia, by the command of Major-General Heintzelman, now at Greenwich, and which will be on the right of the attack.

"By command of Maj. Gen. McDowell.

"S. F. BARSTOW,
"*Assistant Adjutant-General.*"

This order was written by me in General Sigel's room at Buckland Mills, after a full conversation with him, and embodied the result of that conversation. General Sigel had gone to sleep while I was writing, and not wishing to disturb him (for we all needed rest when we could get it), I went to my camp, and gave the rough of the order to a staff officer to put in form and carry into effect. But before I thought he had done so, I received the following order from General Pope:

"United States Military Telegraph. Received, Bristoe Station, August 27, 1862, 9 p. m.

"Major-General MCDOWELL: At daylight to-morrow morning march rapidly on Manassas Junction with your whole force, resting your right on the Manassas Gap Railroad, throwing your left well to the east. Jackson, Ewell, and A. P. Hill are between Gainesville and Manassas Junction. We had a severe fight with them to-day, driving them back several miles along the railroad. If you will march promptly and rapidly at the earliest dawn of day, upon Manassas Junction, we will bag the whole crowd. I have directed Reno to march from Greenwich at the same hour upon Manassas Junction, and Kearney, who is in his rear, to march on Bristoe at daybreak. Be expeditious and the day is our own.

"JOHN POPE, *Major-General.*"

This caused a change in the preliminary dispositions I had directed, and the following order was issued:

"[General Orders No. 10.]

"HEADQUARTERS THIRD ARMY CORPS,
"*Reynolds' Camp, August* 28, 1862.

"1st. Major-General Sigel will immediately march with his whole corps on Manassas Junction, his right resting on the Manassas Railroad.

"2d. Brigadier-General Reynolds will march on the turnpike immediately in rear of General Sigel, and form his division on the left of General Sigel, and march upon Manassas Junction.

"3d. Brigadier-General King will follow immediately after General Reynolds, and form his division on General Reynolds' left, and direct his march upon Manassas Junction.

"4th. Brigadier-General Ricketts will follow Brigadier-General King and march to Gainesville; and if, on arriving there, no indication shall appear of the approach of the enemy from Thoroughfare Gap, he will continue his march along the turnpike, form on the left of General King, and march on Manassas Junction. He will be constantly on the lookout for an attack from the direction of Thoroughfare Gap, and, in case one is threatened, he will form his division to the left, and march to resist it.

"The headquarters of the corps will be at King's division.

"By command of Major-General McDowell.

"E. SCHRIVER,
"*Colonel, and Chief of Staff.*"

This is the order for the march of the troops from Buckland Mills to Manassas Junction, which General Sigel received at two and three-quarters o'clock on the morning of the 28th.

Being asked:

"Will the witness state if this is not a copy of the order of march of which he acknowledged the receipt?

"Answer. I confess that I have never read this order; at least, I do not remember to have read it, because it is in contradiction with my acts and my understanding of our situation at that time. And if I had read it, it would be in my memory, I think."

(The General Order No. 10, just referred to, was read by the Recorder.)

"The witness desired to make a correction of his last answer. From a reperusal of the order, I would like to have the words 'because it is in contradiction with
1837 my acts and my understanding of our situation at that time,' considered no part of my answer. I add, in regard to this, that the order I received was written on thin paper, and I believe in pencil."

"Q. (By General MCDOWELL.) What order did you receive from General McDowell, of which you acknowledged the receipt, and in compliance with which you marched from Buckland Mills?—A. I received the order to march to Manassas Junction, and it may be that it is the same order as this here, but I do not remember that it was such a general order.

"General McDowell here asked a suspension of the examination of the witness, with a view of proving the delivery of this order on that day.

"The court informed General McDowell that a delay or suspension in the examination of this witness for the reason stated was unnecessary.

("Major Willard testifies, proceedings of December 31, that he copied a full copy of General Order No. 10, of August 28, 1862, for General Sigel, and that it was sent to him.")

The witness continued:

"Very often when a general order is received by a corps commander, he only takes in his mind that part of the order which affects his own corps, and that, therefore, I may not remember very well now, after the lapse of many weeks, that I received this general order.

"Q. (By General MCDOWELL.) Does the witness mean to be understood that the whole of that general order did not affect him, and does not the name or designation even of *general* order indicate this?—A. Certainly, I admit that the whole order, if I had received it, did refer to me, but especially what is referred to in the first part, which point I fully admit I understood, and acted upon it. I mean the order directing me to march to Manassas Junction.

"Q. (By General MCDOWELL.) Was it not your duty to have made yourself acquainted with every part of a general order sent you, especially one inviting co-operation of your forces with those of another?—A. Certainly it was my duty; but if this was the order sent to me I must have regarded it as pretty indefinite, all things taken in consideration."

"Q. (By General MCDOWELL.) You state that when you left Buckland Mills on the morning of the 28th, you did not know anything at all of any provision being made by General McDowell for meeting Longstreet at or this side of Thoroughfare Gap.

Does or does not the General Order No. 10 for the march make provision for this?—A. The order mentioned makes a provision."

To show further that General Sigel knew of both of these orders, and that he *did* know what arrangements I had made with reference to the enemy's force coming through Thoroughfare Gap, and knew he himself was to have had this service, see evidence of Lieut. Col. Henry E. Davies, Second New York Cavalry, as follows:

"Q. (By General McDowell.) Were you not for a short time on duty with Major-General Sigel on the 28th of August, 1862?—A. I was.

"Q. (By General McDowell.) Who placed you with General Sigel, and for what purpose were you so placed?—A. Major-General McDowell, for the purpose of showing to Major-General Sigel the country between Gainesville and Thoroughfare Gap, and in that vicinity, at General Sigel's request.

"Q. (By General McDowell.) At what place and at what time was this done?—A. In the evening of the 27th of August, at or about ten o'clock, at General Sigel's headquarters at Buckland Mills.

"Q. (By General McDowell.) Did you or do you know for what purpose General Sigel wished to know from you the next day concerning the country between Thoroughfare Gap and Buckland Mills?—A. I understood that General Sigel had been assigned to the duty of occupying Thoroughfare Gap.

"Q. (By Generel McDowell.) Did you, on the 28th, bring any message from General Sigel to General McDowell, which could show that the former knew that General McDowell had taken, or was to take, measures for meeting the enemy coming through or from the direction of Thoroughfare Gap?—A. I did. In marching from Buckland Mills towards Gainesville, I showed to General Sigel a cross-road leading over to Haymarket. He asked me some questions about the road, and then sent me back to General McDowell, instructing me to say to General McDowell that the division which was to hold Thoroughfare Gap had better go by that road.

"Captain Leski, an aid-de-camp on my staff, states that the force sent under General Ricketts to Thoroughfare Gap consisted of four brigades of infantry, of
1838 about eight thousand men, two brigades of cavalry, and six batteries of artillery.

He also states (January 5) that by General McDowell's direction, he went in the night of the 27th and 28th of August, to see if troops could be sent up to the Gap on the west side of the stream running by Buckland Mills—which he found it would be impossible to do. That early in the morning of the 28th, before daylight, General McDowell sent him to General Sigel for Bayard's cavalry (which belonged to my corps and had been sent by me to General Sigel); that General Sigel said it would be impossible for him to advance without cavalry; that he would send them as soon as he could, stating at the same time that the First New Jersey Cavalry was somewhat beyond Buckland Mills, and could be used; that as soon as we came in sight of this cavalry it was sent immediately to Thoroughfare Gap to get news of the enemy; and that, shortly after, General McDowell sent him also to Thoroughfare Gap, with instructions to bring as early news as possible about the enemy.

Captain Leski sent me back the following:

"The enemy is advancing through the pass.

"W. LESKI, *Captain and A. C.*

"Colonel Wyndham will hold them as long as he can, and asks to be re-enforced.

"W. L."

This was sent by the hands of my aid, Captain Wadsworth, to General Ricketts, and indorsed as follows:

"August 28.

"Send a brigade and battery to Colonel Wyndham, and follow them up with your whole division.

"ED. SCHRIVER,
"*Colonel and Chief of Staff.*

"General Ricketts."

This order General Ricketts received and obeyed. General Ricketts was asked (January 6), by General McDowell, "what o'clock on the 28th of August were you ordered to march from your bivouac beyond Buckland Mills?—A. I was ordered to march at two o'clock in the morning.

"Q. (By General McDowell.) How far did you march on the Warrenton turnpike before you turned off the road to go by Haymarket under the orders given you by Captain Wadsworth?—A. I had crossed the bridge at Buckland Mills, and was but a very short distance from it.

"Q. Do you know any cause of delay in your getting forward from your bivouac to the place where your turned off; were there any obstructions in the road?—A. The road was very much encumbered by wagons; I saw a very large number in the vicinity of this stream, Broad Run."

From all this it is evident: 1st. That I took the very measures General Sigel censures me for not having taken; and 2d. That General Sigel knew I had taken them. It will not fail to be noticed, however, that what General Sigel condemns me for not having done is precisely that which my then commanding general regrets I did. General Pope says (January 14), in reference to his order dated Bristoe, August 27, 1862, 9 o'clock p. m.:

"The order directing General McDowell's march would have carried him to the eastward, and in the same direction in which the main body of the enemy was marching to join Jackson. I believed then, and believe now, that we were sufficiently in advance of Longstreet, who was supposed to lead the main body of the enemy—that by using our whole force vigorously we should be able to crush Jackson completely before Longstreet, by any possibility, could have reached the scene of action. I sent nothing to General McDowell concerning Thoroughfare Gap, and regretted afterwards that any portion of his forces had been detached in that direction. General McDowell had the discretion, however, necessarily incident to his position and to his distance from me to make such a disposition to cover his rear as he might consider necessary.

"From the order of General McDowell, which he showed me afterwards (the order No. 10), I understood that the movement of Ricketts' division was made conditionally, and in view of the possibility of an attack upon his rear from the direction of Thoroughfare Gap."

It will be seen from General Pope's telegrams to me of the 26th and 27th that, after the chances of a battle at or near Warrenton had passed, he expected one might take place near Gainesville. Hence, his telegraphing me "that we had best move with our whole force to occupy Gainesville, so as to secure our communications with Alexandria." His general order dated Warrenton Junction, August 27, is to the same end. This order required that my corps, General Sigel's corps, and Reynolds' division should pursue the turnpike as far as Gainesville; that the corps of Heintzelman and Reno,
and eventually that of Porter, should concentrate in that direction, by way of
1839 Greenwich, and that Reno and Heintzelman should support me in any operation
against the enemy.

My preliminary order of August 27 was based on this order of General Pope's and on the information I had received at Buckland Mills, and on my way there, which information was then unknown to General Pope, who was now away from telegraph lines. I directed the holding of the strong position of Buckland Mills and Haymarket, with a support at Gainesville (the three places being nearly equidistant from each other), so as to hold or check any force coming through either gap, whilst two of my divisions, with the corps of Heintzelman and Reno, should go against Jackson in the direction of Manassas. I sent to General Pope, soon after I received it, the information I had obtained of the near approach of Longstreet, and informed him of the dispositions I had made. My communication had hardly gone before I received his order to march my whole force to Manassas. Hence my General Order No. 10, changing the arrangements I had made, and conforming them to General Pope's order. It will be seen that whilst I did so, I provided for the contingency of an attack from Longstreet from the direction of Thoroughfare Gap, which the information I received left no doubt would be made if we did not get forward most expeditiously and at the earliest moment. To make sure of this, I ordered the troops to march at 2 o'clock a. m. General Sigel's rear division had been ordered in my preliminary order of 11.30 p. m. of the 27th to march upon Gainesville immediately, and should have been in motion before the others. The orders I gave General Sigel at Warrenton to march on the turnpike from that place (see January 7) directed him as follows: "No wagons but for ammunition will accompany your corps on this road. Your baggage trains will immediately proceed to Catlett's."

Notwithstanding this order, which was also given to my own command and enforced in it (I had myself nothing but my horse), General Sigel had with his corps nearly two hundred wagons, which kept blocking up the road and retarding the movement; and notwithstanding I had seen him on the morning of the 28th before he left, and had urged on him personally to march immediately and rapidly, and had shown him General Pope's orders to me requiring this to be done, yet his advance was so slow that the note written to me by Captain Leski at Thoroughfare Gap, at 10.15 a. m., and received by me near Gainesville and then sent to General Ricketts, reached him just this side of Buckland Mills, a distance of about three miles from his bivouac of the night before. His division had been on their feet since 2 o'clock a. m., over nine hours, and in that time had not gone twice the length of the division front from where they started. For an account of the efforts made to get the troops forward over this fine turnpike road, which General Sigel states had no obstructions on it, see evidence of General Ricketts, Colonel Schriver, Major Barstow, and Captain Haven, from which it will be seen that the provision I had made for Longstreet, and which General Pope says was not in compliance with his orders, and could only be justified by the danger I might find myself in from an attack on the rear of my column, was owing entirely to the delays for which certainly I was not responsible.

WANT OF CO-OPERATION BETWEEN GENERAL M'DOWELL AND GENERAL SIGEL'S CORPS ON THE MARCH FROM BUCKLAND MILLS.

In reference to this, General Sigel states:

"I further believe there was not the necessary co-operation between the two corps on their way to Manassas—my corps and that of General McDowell—by which want of co-operation we lost the opportunity to attack the enemy on his left flank while he was retreating from Manassas."

And further:

"When our troops were on their march to Manassas, I was of the opinion that a battle would be fought near the point where the troops of General McDowell were at that time. *I ordered all the troops back*, and formed them in line of battle, advancing about a mile towards Groveton."

In reference to having then again received the order from General McDowell to march to Manassas, General Sigel continues:

"I said nothing, and marched to Manassas; but I thought that it was a *great* mistake. By saying that it was a mistake, I meant to say that the troops lost time in marching and countermarching to come to the same point nearly in the evening which they left at noon in compliance with orders of General McDowell."

"When General McDowell's troops and my own were on the march to Manassas, Jackson changed his position and was on his march between Manassas and Gainesville. He, therefore, was not in order of battle and presented us his left flank. If my corps and a division of General McDowell would have attacked him he would not have been able to come so early to the point which he intended to reach, a point between Groveton, Centreville, and Newmarket; and, secondly, if my corps had not been ordered to march to Manassas, we would have been able to assist General King or those troops which were attacked on the evening of the 28th. By sending away my corps either of these opportunities was lost."

1840 "I do not think it probable that they would have defeated the enemy; but we would have retarded his movements, brought him to a stand when he perhaps would not have liked to fight, and given an opportunity to the commander-in-chief to see clearly where was the enemy's position, and to what points he should direct his troops."

On the night of the 27th of August the corps of General Sigel was between Gainesville and Buckland Mills, his advance at the former and his reserve at the latter place. General Sigel knew on the 27th that his corps would have to march early the next day. In his note to me from Buckland Mills in the afternoon of the 27th, whilst I was still at Warrenton, he says: "We should all be here to-night and press forward to-morrow at daybreak"; and in another note from the same place he says: "I think they (the enemy) should be attacked at once at Manassas Junction."

General Pope's order of march to Gainesville, my conversation with General Sigel at Buckland Mills, my preliminary order of 11.30 of the 27th, our situation at the time with respect to the enemy, all must have shown him that an early movement was a matter of course.

By the orders of Geueral Pope the whole force was to march rapidly at the earliest dawn of day upon Manassas Junction, the right resting on the Manassas Railroad, the left well thrown to the east.

These orders were sought to be carried out by me in General Orders No. 10, heretofore referred to in the chapter on Thoroughfare Gap.

In the first place it is to be remarked that General Sigel himself admits that this order does provide for a co-operation between the two corps.

It cannot be said the order was fully carried out. In the first place, though the troops were started early enough in the morning, the march, in spite of every effort on my part, was not a rapid one. It was, on the contrary, a slow one. There is much evidence to show that by noon General Sigel's column was about two miles only from Gainesville, where his advance had been the night before. (See General Sigel's, Lieutenant-Colonel Tillson's, Captain Dahlgren's, Major Kappner's evidence.) Under the preliminary order of 11.30 of the 27th, he should have had his troops in motion before the others, who started at two o'clock. General Reynolds, who was immediately behind General Sigel's corps, could not get forward, and sent word back that General Sigel was stopping the road. (See Colonel Schriver's evidence.)

Major Barstow, who was sent forward, says he found General Sigel halted.

Major Kappner, of General Sigel's own staff, speaks of General Sigel "breaking up his camp about ½ to 12." (See proceedings of January 29.)

The first consequence of this stopping up the communications was the necessity of detaching Ricketts as a rear guard towards Haymarket to hold Longstreet in check, as has been before described.

The next departure from the orders given General Sigel was in his not going to the north of the railroad, instead of, as he persisted in doing, going to the south of it.

He was directed to march with his right resting on the Manassas railroad. On being asked by General McDowell—

"Why did you fail to obey General McDowell's orders, which required you to march on Manassas Junction, with your right resting on the Manassas railroad?—"A. I believe that I did not disobey the order of General McDowell, because I understood that I should march to Manassas Junction; and, having arrived there, form my corps so that the right rested on the Manassas railroad.

"2d. If I could have undertaken to march to Manassas Junction with my right always on the railroad, it would have been impossible to do so, according to my best knowledge; and

"3d. There seemed to me a contradiction in the order in saying that I should march to Manassas Junction, and in the same time to rest with my right on the railroad. I understand that this word *resting* can only relate to the formation of troops, and not to their march."

It is hardly necessary to call attention to the verbal criticism in the foregoing of the use of the word "resting," as applied to a march, which was repeated in General Order No. 10, from General Pope's orders, "resting," in this connection, being equivalent to "being."

That it was impossible for him to march with his right always on the railroad was proved not to be the case by the march of the other divisions north of the road.

As to his understanding he was to go to Manassas by the most convenient road he could find, and, when he arrived, to form with his right on the Manassas road, he could not have had this understanding from the orders given him, for the word "formation" or "form" was not used as applied to his corps.

On this same subject he states in his official report: "I received orders at three o'clock in the morning to march to Manassas, and to take a position with my right resting on the railroad leading from Warrenton Junction to Manassas Junction; so, at least, I understood the order."

1841 It will be seen that Warrenton Junction is not mentioned in either General Pope's order or my own. He seeks to explain this by saying there is a piece of the railroad between Manassas Junction and the station common to both the Orange and Alexandria and the Manassas Gap roads, the station being about a mile east of the junction. The junction is, in fact, the only point in common. But, admitting what he says as to the piece being in common, it has nothing to do with his statement; for it is the section between the Manassas Junction and the Warrenton Junction on which he says he understood he was to rest his right—and this is all of it west of the Manassas Junction.

Is not the whole manifestly a pretext to excuse his nonfulfillment of the orders he received?

In his evidence, General Sigel admits having marched south of the railroad.

Captain Haven, my aid-de-camp, was asked:

"Did General McDowell send you to General Sigel, at Gainesville, on that morning? What message did you carry and what was General Sigel's answer?—A. General McDowell explained to me that General Sigel was to cross the railroad at Gainesville, then turn to the right and march along the railroad to Manassas, and told me to go forward and see if General Sigel was so doing. I found General Sigel at Gainesville, near where the four roads meet. He said to me he would go on a little further—a few hundred yards beyond the railroad, because the road made an angle with the railroad—and would then turn off to the right. I made known to General Sigel the message upon which I was sent.

"Q. (By General McDowell.) What seemed to be understood by General Sigel as to the route he was to pursue to Manassas with respect to the Manassas Railroad?—A. That after crossing the railroad from the south side to the north side, he was to march by the side of the railroad to Manassas."

See also Captain Krebs' evidence (proceedings of January 14):

"Q. (By General McDowell.) Did General McDowell send you to General Sigel on the occasion of the march from Gainesville toward Manassas Junction, on the 28th of August last, after the skirmish of Reynolds' division?—A. He did.

"Q. Where did you find General Sigel's command, on the north or the south side of the Manassas Railroad?—A. I found General Sigel's command on the south side of the railroad—he and staff, I should think, about four miles from Gainesville, on the south side of the railroad.

"Q. Did you represent to General Sigel that he was not on the right road, and that it was General McDowell's order that he should go to the north of it?—A. I told him that he was mistaken; that I understood the order that his right should rest on the railroad, his left on our right, which was on the Warrenton turnpike."

First Lieut. William Burchard, on General Sigel's staff, says (proceedings of January 30):

"General McDowell asked me how far from this place on the Manassas Junction road was General Sigel, and I telled him about four miles. General McDowell say all right;

go to General Sigel and tell him he should take position—the right on the railroad, the left on the pike."

See, also, evidence of Captain Haven, January 8, as to the interview of one of General Sigel's aids with General McDowell as to the route General Sigel should take. He says:

"A second aid (the first did not speak English well) came and asked, 'Did General McDowell send an order for General Sigel to go to the right of the railroad?' General McDowell replied emphatically, 'No; he is to go with his right on the road.'"

It will thus be seen it was not for want of reiterated orders, both written and verbal, that General Sigel put himself, and persisted in keeping himself, south of the railroad, when his orders were that he should go to the north of it. There may have been want of co-operation here, but I feel it is not justly to be ascribed to me. This departure by General Sigel from General Order No. 10 was the cause of another—Reynolds' division—marching along the turnpike some two miles beyond Gainesville, and then turning off to go in the direction ordered, and not having General Sigel's corps between it and the railroad, as I had provided for, left so wide a gap that I then brought King's division to the right instead of the left of Reynolds, my object being to have the troops thus marching on Manassas separated by such intervals as would give them the proper space for being brought into line—to the front! That this *was* carried out with any great precision, or *could* have been so, in a broken, partly-wooded country, with places impracticable for artillery, is doubtful; but I suppose it might have been sufficiently so for practical purposes. At all events, it was incumbent on us to make every effort to try and do so, as nearly as possible to comply with the orders from general headquarters. I did not pretend to superintend the details of the march of either General Sigel's corps, or of the divisions, or either of them, of my own corps. My time and attention were fully otherwise occupied. It has been thought—because later in the day,
1842 and when the troops were put in march for Centreville, both Reynolds' division and Sigel's corps passed by Bethlehem Church on the railroad, near which road King had also been—that my whole force, instead of being marched so as to cover a wide front, was marched by a flank along the railroad. General Sigel marched, in spite of my efforts, south of the road, King to the north of the road, with Reynolds to his left. The latter, I am told, tried to move by heads of brigades, but the country was too rough on his left to enable him to continue to do so. When I joined Reynolds' division and gave it orders to go to Centreville, it was some distance from Bethlehem Church (see evidence of Colonel Schriver) but went by that place as the nearest way to its destination.

It is to be observed, however, that it is not for any failure in complying with the general order, or in attempting to do so, that General Sigel finds me wanting. It is that for the want of co-operation, as he calls it, between the corps we lost the opportunity, he says, to attack the enemy in his left flank while he was retreating from Manassas; that he was of the opinion a battle would be fought near the point where the troops of General McDowell then were; and he ordered all the troops back and formed them in line of battle, advancing about a mile towards Groveton. To show this to the court, General Sigel has submitted maps, with the position of the enemy placed in a way that supports the view he has taken; and he has sent up the officer of his staff, Major Frantz Kappner, who saw the enemy at the time he wished to attack them in flank, and when, by my orders to march to Manassas, he was prevented from doing so.

This witness had also a map, with the enemy's position all marked down, showing how he might have been defeated, there being, he says, only one army corps of the enemy there at that time, which, being on the march and not in position, was, according to strategic rules, in danger of being flanked and defeated.

In consequence, he adds, of our retreat from that position the enemy had ample time to put himself in position and await re-enforcements. It will be seen with what confidence General Sigel states where the enemy was going and what was his object. He says: "Jackson changed his position whilst we were on the march to Manassas, and was on his march between Manassas and Gainesville. He, therefore, was not in order of battle, and presented us his left flank; and had he been attacked, he would not have been able to come so early to the point he intended to reach between Groveton, Centreville, and New Market!"

As it is in Major Kappner's reconnoissance this impression was primarily made on General Sigel, I will refer to it more fully. The major says that at "about ten o'clock in the morning, the center of General Sigel's army corps being about three miles from Gainesville and taking their rest, some of General Sigel's escort came in and told him that the enemy advanced from the right corner of the left flank. In the proper time I have asked General Sigel for to give me twenty-four cavalrymen for to go out and see if the information of the scouts was correct." Going about a mile and a quarter he came to a cleared hill, from which he had a "very far view," from which he could see Centreville. Saw "about five videttes to the front, towards General Sigel's march line, and about a quarter of a mile distant from that videttes there was about

fifty cavalry of the same videttes; and [on] the route towards Groveton from New Market I saw an infantry column—about three regiments. All this has happened. I immediately let General Sigel in writing know. I reported to General Sigel that the army (General Sigel's) with wagons and artillery could pass along the road without interruption, as well as the movements of the enemy was reported to General Sigel. I remained at the same position about half an hour. I saw General Sigel with a part of his army coming before the same position. This was about a quarter to twelve in the morning. General Sigel telled me that before he break his camp he sent a report to General McDowell. When I came to General Sigel, when he was below the hill, and wanted to stretch his column to engage the enemy, there came an ordnance officer from General McDowell. The orderly came with an order to General Sigel to immediately march on Manassas. General Sigel at the same moment took the same route as he came, to march towards Manassas, to comply with the order of General McDowell."

(As General Sigel has made it a great point that the line of battle which he had formed to go against the enémy was broken up by me, it may be well to call attention here to what that line amounted to. According to this officer of his own staff, the chief engineer, it amounted to an *intention* to form a line, and that none was formed, General Sigel going back to the south of the railroad by the route he came!)

"Q. (By the court.) Who was the officer who took the message from General Sigel to General McDowell, referred to?—A. Assistant Engineer Burchard, formerly assistant engineer; at present first lieutenant and aid-de-camp on General Cluseret's staff.

"Q. (By the court.) Did you see Lieutenant Burchard start to go to General McDowell?—A. No; not while I was on the hill; but Lieutenant Burchard came back again and informed me while I was there.

1843 "Q. (By the court.) From that hill you could see Manassas Junction?—A. No; it was too far to the left.

"Q. (By the court.) Could you see Centreville from that hill-top?—A. Yes.

"Q. (By the court.) Did you see any other position of the enemy than what you have described?—A. None but what I have stated. It was not everywhere that I could see, on account of little woods.

"Q. (By the court.) Could you see General McDowell's corps?—A. Not on the 28th; there were woods in the rear of me. It was everywhere woods; but in that particular place open fields.

"Q. (By General McDowell.) How far was the enemy from you on the hill?—A. My impression is about a strong half mile.

"Q. (By General McDowell.) How long was the enemy's column?—A. One hundred and twenty yards; it might have been more, for they were already turning upon the turnpike, and I could not see all.

"Q. (By General McDowell.) How long were they in sight?—A. About five minutes; then I lost sight of them, as they were turning the road. Whether there was one regiment or three regiments I cannot tell. They might have been going forward a long time, and this may have been their rear.

"Q. (By the court.) The witness has said there might have been one regiment. Why did he previously say there were three regiments?—A. When I have seen the troops march (so I have observe for one hundred and twenty yards), whether they have marched by fours or sixes I could not judge. I have stated they were about three regiments, but there may have been but one."

The major began with an army corps which General Sigel adopts as Jackson's army; we have seen it come to a column of three regiments; then it gets to what may be but one regiment of infantry with 55 cavalry.

I will now refer to the testimony of First Lieutenant Burchard, who, it is stated, was the officer sent to me to acquaint me of this position, and force of the enemy:

"Q. (By the court.) What was your rank and position in the military service of the United States on the 25th of August last?—A. I was engineer with General Sigel in the Army of Virginia; had no military rank—no commission at that time.

"Q. (By the court.) Did you take any information from Genaral Sigel to General McDowell on the 25th August last?—A. No information from General Sigel to General McDowell.

"Q. (By the court.) Did you make any communication from anybody to General McDowell relating to the position of the enemy?—A. I gave information to General McDowell relating to the position of the enemy from myself; I received no orders from any one.

"Q. (By the court.) State that information.—A. I was sent out, by order of General Sigel, to our left after we heard some firing, with twenty men—cavalry. I crossed the field to Fairfax Court-House pike and came near Groveton, where I found the enemy in position. As I came back near Gainesville, and about a mile and a half from Gainesville, I saw General McDowell, and I thought it my business to report to General McDowell what I saw and where I had been sent. General McDowell asked me how far from this place, on the Manassas Junction road, was General Sigel, and I telled

him about four miles. General McDowell say all right; go to General Sigel and tell him he shonld take position—the right on the railroad, the left on the pike ; that is the only communication I took charge of.

"Q. (By the court.) When you went towards Groveton, and before seeing General McDowell, did you discover any portion of the enemy? and if so, state what you saw.—A. Yes, sir ; I saw some artillery and some cavalry pickets; I think I saw a battery, but I cannot say, only I *am* sure there was some artillery ; I saw of cavalry pickets some ten or twelve men across the fields; and of cavalry, in all, something about fifty men. I saw no infantry.

"Q. (By the court.) State whether you informed General McDowell what you had seen.—A. I telled him that I was out in that direction, about a mile and a half, I had seen some of the enemy and a battery in position. I don't recollect whether I said anything about the cavalry and pickets. This is all the information I gave to General McDowell.

"Q. (By the court.) Have you personal knowledge that any communication was sent to General McDowell on that day, informing him of the presence of an infantry force to your left and front, or of the movement of a train of wagons on the pike towards Gainesville?—A. No, sir."

So it seems Lieutenant Burchard brought no message to me of General Sigel's
1844 having formed a line of battle, of his having an army corps in front of him, or a brigade, or a regiment, or any infantry at all, or any message from General Sigel or anybody else, but bore one from me to General Sigel that he should get with his right on the railroad, which, however, he did not do. As to this force which the lieutenant saw, it was the same one which fired into the head of Reynolds' column, and consisted of a section of artillery and some mounted men, evidently a reconnoitering party.

See evidence of General Mead, Lieutenant-Colonel Tillson, and Captain Haven, all fully agreeing on this point. General Meade thought at first it injudicious in me to leave the road after this evidence of the enemy's being there, but he afterwards thought the party to be a mere demonstration.

There has been an impression that this small force that fired into the head of Reynolds' division as it was coming up the road from Gainesville was the same force that that evening became engaged with King's division, and was, in fact, the head of Jackson's army. General Sigel, it is plain to me, is under this impression ; his maps, and his theories, and assumptions, having been made, not at the time of the occurrence of which I am now seeking to explain, but from afterthoughts. It is a pity for the soundness of his theories he had not waited a little longer. He would have found that Jackson, whom he so confidently stated to have been marching by a flank within striking distance of his head of column, and who was seeking to gain some point between Centreville, Groveton, and New Market, was some eight miles away and marching in a different direction.

Fortunately for a true understanding of the matter of Jackson's position, we have the account of Captain Pell, aid de-camp to General Burnside, who was taken prisoner on the 27th, and was with the enemy's army all of the 28th and 29th.

It is curious, before getting at the exact truth, to recall the different reports or statements made with so much confidence by General Sigel. On the 27th, 1.50 p. m., he informs me "the enemy is at Manassas by this time, and has beaten our forces there, and to proceed to Alexandria to destroy our depots."

In another he states, Jackson may be at Manassas or elsewhere.

Still later: Jackson must have been near Manassas Junction, and beyond, near Kettle Run.

In the morning of the 28th he reported the enemy's main force still at Manassas Junction.

Still later he says that Jackson was on the march between Manassas and Gainesville to go to a certain point between Centreville, New Market, and Groveton.

And it is on these assumptions he bases his opinions of my neglect of duty ; that if I had not broken up his line of battle (which seems now not to have been formed), he would have defeated Jackson, and he would have been in position to support King's division in the evening. It will be seen that he says he could not get forward to join King, because it was too late in the evening. It may be asked, if he had marched as he was ordered, rapidly, and thus have been an hour earlier even, if this junction could not have been made.

Captain Pell, fortunately for this case, can give us precise information, free from all speculative error. He states that he left Manassas Junction about nine o'clock in the evening of the 27th. The rebel troops commenced their march previous to that time ; that he was with Ewell's division of Jackson's army, which consisted, he says, of three divisions of about 21,000 men ; that at about 10 o'clock a. m. of the 28th he was with the column of Ewell's division on Cub Run, somewhere near the crossing of a road to the north of the Centreville and Gainesville road. He says, "The troops I was with halted there for some hours, and then proceeded to a place called Groveton Heights,

by the way of Sudley Springs. They arrived at Groveton Heights about eight o'clock in the evening. There had been a battle there in which Doubleday's division was, I believe, engaged. I personally reached Groveton Heights at this time. There were troops and wagons in front and in rear of me. I think the greater part of Ewell's division was behind me, and know we passed a great many troops on the road during the day."

It will be seen from this how little all General Sigel's and his Engineer Kappner's theories are worth concerning Jackson's being at noon on the 28th with his flank within convenient distance of Sigel's column.

We were, not only at noon, but since two o'clock in the morning, all in error as to the position of the enemy. It was not till the 30th I found out what it had been on the 28th; and it seems General Sigel has yet to find it out without he has acquired his information since he was before this court.

I have had some difficulty in bringing before the court all the facts connected with these matters of the 28th. It is not always even one's staff—it is so with me at least—know the motives of their chief, or know all the facts the chief becomes possessed of. This I find to have been the case about the change of the order of march of King's division, and about the means and measures I took to satisfy myself of the kind, strength, and object of the small force that appeared in the road and fired a half dozen shots at us from a distant hill. It has been asked if this circumstance was
1845 reported to General Pope, and if it should not have been. Of the general principle that the general commanding an army shall be informed of everything that may affect it which comes to the knowledge of his subordinates there can be no question. Yet, on the other hand, nothing is so embarrassing, as I have found it to be in the two armies I have commanded, as to receive crude information, or what is called a *stampede*, which tends more to embarrass than to serve any good end. I did not think of sending information until I found out what the party was; and when I did, it did not impress me sufficiently to make me judge it necessary to send across the country for that purpose only.

It will be seen I had communicated freely with the general commanding throughout the campaign. I would not have made an exception in this case had it seemed to me of importance. The importance it has since received grows out of the error in believing it to have been part of the main army of Jackson, which General Sigel thought was near Groveton at that time.

I do not pretend to be able to stand the test of being judged by "wisdom after the fact." I know nothing short of an omniscient being that could.

It was between three and four in the afternoon that I got word the enemy were not at Manassas, and soon after I received, in quick succession, the two notes from General Pope—the first one directing me to go to Gum Spring, some twenty miles off; also directing me to ascertain about certain matters in Centreville, and asking me to give him my views fully, as I knew the country, he said, better than he did; the last informing me that the enemy were in force on the other side of Bull Run, on the Orange and Alexandria Railroad, and at Centreville, and directing me to march my forces direct for the latter place.

General Sigel had in the mean time reported to General Pope direct, and received orders direct from him to march to Centreville.

King's division being nearest the Warrenton pike, was, after the receipt of General Pope's order, directed upon it to go to Centreville; and Reynolds being further to the front in the direction we had been marching, and near the road from Bethlehem Church to New Market and Centreville, was sent by that road. Under the belief the enemy was moving to the south of us to go entirely around and fall on our enormous wagon train under Banks, and was now on the opposite side of Manassas from where I was, and seeing from General Pope's notes that he was making mistakes as to distances and places, I wished, in order to answer his request, to give him fully my views, as I had been doing throughout the campaign, to confer with him personally, and went to Manassas Junction for that purpose.

My knowledge of the country was referred to, because the topographical map of Northeast Virginia had been made at my headquarters, and largely under my own directions; and I was, therefore, supposed to be well acquainted with the whole country. Much of the country was laid down from actual surveys, but much, and particularly that part around Manassas, which had been made when the country was in the hands of the enemy, was entirely conjectural. Still, I knew what was correct from what was supposed to be.

I did not find General Pope at Manassas, and, just as I reached there, I heard the sound of cannonading in the direction of Groveton, and immediately set out for that place. Failing to get there in the straight line we attempted, we had to go around by the Sudley Spring road, and did not reach the vicinity of Warrenton pike till late at night, when we lay down by a camp-fire of General Sigel's men till daybreak.

General King's division had gone along the road till near to Groveton, when, seeing the enemy to the north, they moved across from the turnpike and met them, and had

a short and severe action, in which only Gibbon's brigade and two regiments of Doubleday were engaged. They repulsed the enemy, and held their ground, remaining masters of the road. (See evidence of General King, Lieutenant-Colonel Tillson, and Captain Haven.) I had sent three of my staff with this division, when I left it to go to Reynolds. During the engagement Reynolds' division was moving up the Sudley Spring road to join King; but nightfall stopped its march, and it got no further than the hill above the Warrenton pike, and about a mile from Groveton. General Reynolds had gone personally to King's division, and whilst there it was decided that the division should remain where they were, until they had orders to the contrary, and Captain Haven was sent to report this to me. (See evidence of General Meade and Captain Haven.)

I proceeded to join Reynolds' division, as soon as it was light enough to move, and found General Reynolds, who also had not been able to rejoin the command during the night, just returned from King's division, which he informed me had, after Captain Haven left, fallen back in the night to Manassas. (For the reasons of this step, see evidence of Generals King and Ricketts.)

General King, being asked by the court—"Had you any orders or directions given to you by General McDowell to return that night to Manassas?

"Answer. I had no orders on that subject. I acted on my own responsibility."

The only orders I gave this division were to proceed to Centreville by way of the Warrenton turnpike.

1846 OPERATIONS OF GENERAL MCDOWELL ON THE 29TH OF AUGUST, IN CONNECTION WITH GENERAL SIGEL.

General Sigel charges that I did not make the necessary dispositions on the 29th of August, by which his corps and my own should act with more unity. He believes my troops could have been on the battle-field at an earlier hour of the day; that I did not give the right direction to my troops; that instead of attacking the enemy in the left flank I came in from the rear—that is to say, instead of coming in the direction of New Market, I came in the direction of Centreville; that I neglected to get a personal knowledge of the affairs of his corps on the 29th of August, which made it impossible for me to make the arrangements as they had to be made, or were intended to be made; and he does not know for what reason I left the position I had on the 28th, in the evening.

The last paragraph refers to King's division, which fell on back on General King's own responsibility—without any orders from me—in the night, to Manassas.

The charge of my not having made the necessary dispositions, on the 29th, for his corps, and neglecting to get a personal knowledge of its affairs, is based on the assumption he makes that he was under my command from the time we were at Warrenton till we arrived at Fairfax Court-House. To show how much he is in error in this, see his own evidence and that of General Pope.

General Sigel says (December 20): "After the engagements at Freeman's Ford, Sulphur Springs, and Waterloo Bridge, I received an order from General Pope that my corps was attached to the command of General McDowell. I regarded myself under his orders from this time until after the battle of Bull Run."

Yet (December 30) he says he does not know that he reported to me personally, does not know that he sent an officer to me to report for orders, either on the night of the 29th, or on the morning of the 30th, or on the night of the 30th, or whether on the 29th or 30th, or after the 30th, I sent him any orders. Nor when he saw me come on the field did he report to me, either in person or by his staff. These dates are those of the main battles of last August. If it will be borne in mind how rigid are the rules for reporting to commanding officers in all the German armies, to one of which General Sigel once belonged, it will be seen how little he regarded me as his commanding officer on the occasion.

It is before the court that I took command of General Sigel, at Warrenton, for a special purpose only, and had command of him on the march, under the orders of General Pope, and the provision in such case made and provided by the Articles of War. General Pope says (January 14):

"Question by the court. Do you mean to be understood that on the morning of the 29th of August General McDowell was no longer responsible for the movements of General Sigel's corps and Reynolds' division? and, if so, produce the orders, if you can, investing him with such command before the 29th, and state any orders which may be given relieving him.

"The witness produced a certified copy of General Orders No. —, dated Headquarters, Army of Virginia, Warrenton Junction, August 27, 1862, which is appended to the proceedings of this day, and marked A.

"Answer. I did not consider General McDowell as having any command over the corps of General Sigel, or as being responsible for the movements of that corps any time during the 29th of August. I sent orders to General McDowell on the morning

of the 29th of August, directed to him at Manassas Junction, instructing him to call in Ricketts' division and join it with King's, and, in conjunction with Major-General Porter, march upon Gainesville by the road from Manassas Junction.

"On the morning of the 29th of August, until the close of the campaign of Virginia, General Sigel's corps, as every other corps of that army, was under my immediate command, and received my direct orders.

"In relation to the division of General Reynolds, I had supposed, until otherwise informed, that it had fallen back with King's to Manassas Junction.

"I sent no orders to General McDowell or to General Sigel changing the relations they had with each other when they marched from Warrenton, for the simple reason that no such orders were needed, the connection between them being dissolved, of necessity, either by the separation of the corps, or by my own personal presence with them. It is not necessary to state to the court that I had no authority to merge into one two army corps, established by the orders of the President; that any temporary connection between them, wherein one corps commander should command both corps, would only last so long as they served at a distance from the general-in-chief of the army to which they belonged.

"On the 29th August I received various reports from General Sigel before I reached the field of battle; saw him many times during the day of the 29th, and gave him several orders, personally and by aids-de-camp.

"I did not understand, nor did I presume General Sigel to understand that he was responsible to anybody but myself for any movement of his troops, or for any orders he might receive during that day."

1847 Before leaving Reynolds' division to rejoin my corps at Manassas I instructed General Reynolds to support General Sigel. General Meade, of Reynolds' division, testifies he saw General Sigel early in the morning of the 29th before the battle, and showed him, on the map, where the division was. The division was constantly on General Sigel's left, fighting with it all day. Yet General Sigel says as follows, in his testimony of December 20th: "On the morning of the 29th I received direct orders from General Pope to attack the enemy, which I did about six o'clock in the morning. I did not know where General McDowell's corps was at that time, or where any other troops were except those of the enemy."

As to the direction I gave my troops on bringing them into battle, which General Sigel says was wrong, I have only to say the direction they took was the one given them by the general commanding the Army himself. (See General Pope's evidence.)

I did bring them up in the direction of New Market; they passed through New Market, and then were moving up to the left of Reynolds (see evidence of Lieutenant-Colonel Tillson), when they were recalled, and brought over to the Warrenton turnpike by the orders of General Pope.

As to General Sigel's charge that he believed that I could be on the battle-field with the greater part of my troops at an earlier hour of the day, it will be seen that General Sigel says he did not know where my corps was, or under what orders it acted. It is therefore more an unfriendly suspicion than a well-founded opinion he here expresses.

When I came up with King's division at Manassas—and I lost no time in joining it by a direct route—I found it getting ammunition and rations, for it had been some time without food.

General Porter's corps came up from Bristoe, and was on the west of it; and, on the march to the front, which afterwards took place under the orders General Pope had given in the first place to General Porter, and then to General Porter and myself, it followed after General Porter's corps. As soon as we got to the front and I saw the condition of things, and learned from General Buford the strength of the enemy coming through Gainesville, and that it was much inferior in numbers to General Porter's corps, and bearing in mind the troubles and delays I had experienced in getting ahead with a large force in front on the same road, I turned my troops off to the right up the Sudley Spring road to the main field to come on the left of Reynolds. The testimony of Captain Leski, Lieutenant-Colonel Tillson, and Colonel Schriver will show I came back from the head of General Porter's column, where my decision had been made, to the head of my own troops, at full speed, and that I immediately set them in motion, and took measures to get them into action at the earliest moment. How long this took and at exactly what hour they moved, I cannot tell. I know, so far as I was concerned, not a moment was lost.

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I have now reviewed what seemed to me to be the principal points in the evidence; there are others I might have noticed, had not this statement already grown to a fatiguing length.

It is now more than five months since, on an intimation from the highest authority, I asked for this investigation. It has been held near where all the alleged acts of commission or omission took place. It has been open. All persons have been invited, in the most public way, to disclose to the court whatever they knew which would

tend to show criminality in my conduct as an officer or as a man; and the court have asked witnesses, not only what they knew, but what they knew others knew. Those who do not wish me well have been asked every question likely to develop anything to my prejudice; and I feel that now, after this tedious and patient investigation, which this court has so faithfully made, that, as to the past, on all matters concerning my loyalty, or sobriety, I may be spared the charges that have been so freely made against me.

Nearly two years ago I was here, organizing the small beginnings of the grand Army of the Potomac. When I commenced, we had here in Washington Cooper, now the senior general in the secession army; Lee, commanding at Fredericksburg; Johnston, the commander of the rebel army of the Mississippi; Magruder, the commander of the enemy's forces in Texas; Pemberton, the commander at Vicksburg; Jones and Fields, prominent generals on the other side, besides many others of less rank. Alexandria mostly, if not wholly, secession; Georgetown and Washington very much so. I organized the first hundred, the first thousand, and the first brigade of the loyal citizens of the place, and this in opposition to all the bad influences brought to bear against us. And when the troops from the North came down, and the capital had been saved, and the opposite shore taken, I organized the army of which the present one is but an extension—a great one, it is true.

I have been in constant active service. No doubt of my loyalty has been entertained by the authorities or my superiors, and no evidence questioning it has been brought before this court. And yet I have had to leave my command, and undergo the humiliation of this investigation, on a charge, in my case, as baseless as it is senseless; and this in as intelligent a country as ours claims to be. The charge of treason
1848 is a fit "*pendant*" to the one of drunkenness, and quite as true, seeing that, to this day, I have never drank anything but water.

Is it not a bad symptom in the nation when such things can take place? Can its officers sustain themselves under such a system, and render that service which the country needs in its present critical state, and must have as a condition of its salvation?

IRVIN McDOWELL, *Major-General.*

EXTRACT FROM THE OFFICIAL REPORT OF MAJOR-GENERAL JOHN POPE, DATED NEW YORK, JANUARY 27, 1863, RECEIVED AT ADJUTANT-GENERAL'S OFFICE, WASHINGTON, JANUARY 29, 1863.

NEW YORK, *January* 27, 1863.

GENERAL: * * * * * *

On the morning of the 27th, in accordance with the purpose previously set forth, I directed McDowell to move forward rapidly on Gainesville by the Warrenton turnpike with his own corps, and Sigel's, and the division of Reynolds, so as to reach that point during the night. I directed General Reno, with his corps, followed by Kearney's division of Heintzelman's corps, to move rapidly on Greenwich, so as to reach there that night, to communicate at once with General McDowell, and to support him in any operations against the enemy in the vicinity of Gainesville. I moved forward along the railroad toward Manassas Junction with Hooker's division of Heintzelman's corps, leaving orders for General Porter to remain with his corps at Warrenton Junction until relieved by General Banks, who was marching to that place from Fayetteville; and as soon as he was relieved to push forward also in the direction of Gainesville, where at that time I expected the main collision with the enemy would occur.

* * * * * * *

On the afternoon of the 27th a severe engagement occurred between Hooker's division and Ewell's division of Jackson's forces. The action commenced about four miles west of Bristoe Station; Ewell was driven back along the railroad, but still confronted Hooker at dark along the banks of Broad Run, immediately in front of Bristoe Station, at which point I arrived at sunset. The loss in this engagement was about three hundred killed and wounded on each side. The enemy left his dead, many of his wounded, and much of his baggage on the field of battle.

* * * * * * *

At dark on the 27th General Hooker reported to me that his ammunition was nearly exhausted, and that he had but about five rounds to the man left. I had by that time become conscious that the whole force under Jackson, consisting of his own, A. P. Hill's, and Ewell's divisions was south of the Warrenton turnpike and in the immediate neighborhood of Manassas Junction. McDowell reached his position during the night of the 27th, as did also Kearney and Reno, and it was clear, on that night, that we had

interposed completely between Jackson and the main body of the enemy, which was still west of the Bull Run range, and in the neighborhood of White Plains. Thinking it altogether likely that Jackson would mass his whole force and attempt to turn our right at Bristoe Station, and knowing that Hooker, for want of ammunition, was in little condition to make long resistance, I sent back orders to General Porter about dark of the 27th to move forward at one o'clock in the night and report to me at Bristoe by daylight in the morning, leaving instructions in some detail for Banks, who was expected at Warrenton Junction during that night or early in the morning. The orders for all these movements are herewith appended. General Porter failed utterly to obey the orders that were sent him, giving as an excuse that his men were tired, that they would straggle in the night, and that the wagon trains proceeding eastward, in the rear of Hooker's division, would offer obstructions to his march. He, however, made no attempt whatever to comply with this order, although it was stated to him in the order itself that his presence was necessary on all accounts at daylight, and that the officer delivering the dispatch was instructed to conduct him to the field.

There were but two courses left open to Jackson in consequence of this sudden and unexpected movement of the army. He could not retrace his steps through Gainesville, as it was occupied by McDowell, having at command a force equal, if not superior, to his own. He was either obliged, therefore, to retreat through Centreville, which would carry him still farther from the main body of Lee's army, or to mass his force, assault us at Bristoe Station, and turn our right. He pursued the former course, and retired through Centreville. This mistake of Jackson's alone saved us from the consequences which would have followed this flagrant and inexcusable disobedience of orders on the part of General Porter.

At nine o'clock on the night of the 27th, satisfied of Jackson's position, I sent
1849 orders to General McDowell to push forward at the very earliest dawn of day toward Manassas Junction from Gainesville, resting his right on the Manassas Gap railroad, and throwing his left well to the east. I directed General Reno to march at the same hour from Greenwich direct upon Manassas Junction, and Kearney to march at the same hour upon Bristoe. This latter order was sent to Kearney to render my right at Bristoe perfectly secure against the probable movement of Jackson in that direction. Kearney arrived at Bristoe about eight o'clock in the morning, Reno being on his left, and marching direct upon Manassas Junction. I immediately pushed Kearney forward in pursuit of Ewell toward Manassas, followed by Hooker. General Porter's corps did not arrive at Bristoe until half past ten o'clock in the morning, and the moment he found that Jackson had evacuated Manassas Junction he requested permission to halt at Bristoe and rest his men.

Sykes' division of Porter's corps had spent the whole day of the 27th, from ten o'clock in the morning until daylight of the 28th, in camp at Warrenton Junction. Morell's division of the same corps had arrived at Warrenton Junction during the day of the 27th, and also remained there during the whole of that night. Porter's corps was by far the freshest in the whole army, and should have been, and I believe was, in better condition for service than any troops we had.

General McDowell reported to me afterwards that he had given orders for the movement of his command upon Manassas Junction at two o'clock at night, in accordance with the directions I had sent him; but General Sigel, who commanded his advance, and was at Gainesville, instead of moving forward from Gainesville at daylight, as he was ordered, was absolutely with his advance in that town as late as half past seven in the morning. Meantime, beginning about three o'clock in the morning of the 28th, Jackson commenced evacuating Manassas Junction, and his troops were marching from that point in the direction of Centreville until ten or eleven o'clock in the day. If the whole force under McDowell had moved forward as directed and at the time specified, they would have intercepted Jackson's retreat toward Centreville by eight o'clock in the morning, and I do not believe it would have been possible for Jackson to have crossed Bull Run, so closely engaged with our forces, without heavy loss.

I reached Manassas Junction with Kearney's division and Reno's corps about twelve o'clock in the day of the 28th, less than an hour after Jackson in person had retired. I immediately pushed forward Hooker, Kearney, and Reno upon Centreville, and sent orders to Fitz-John Porter to come forward to Manassas Junction. I also wrote to McDowell, and stated the facts so far as we were then able to ascertain them, and directed him to call back the whole of his force that had come in the direction of Manassas Junction, and to move forward upon Centreville. He had, however, without my knowledge, detached Ricketts' division in the direction of Thoroughfare Gap, and that division was no longer available in his movement toward Centreville.

Late on the afternoon of the 28th Kearney drove the enemy's rear guard out of Centreville and occupied that town, with his advance beyond it, about dark. The enemy retreated through Centreville, one portion of his force taking the road by Sudley Springs, and the other pursuing the Warrenton turnpike toward Gainesville, destroying the bridges on that road over Bull Run and Cub Run; McDowell, with his

whole force, consisting of his own corps (except Ricketts' division), Sigel's corps, and the division of Reynolds, marching in the direction of Centreville, encountered the advance of Jackson's force retreating toward Thoroughfare Gap, about six o'clock on the evening of the 28th. A severe action took place between King's division of McDowell's corps and the advance of Jackson, which was terminated by darkness. Each party maintained its ground. Gibbon's brigade of King's division, which was in the advance of that division, sustained the brunt of the action, but was supported handsomely by Doubleday's brigade, which came into action shortly after. This engagement and its result were reported to me near Centreville about ten o'clock that night.

I felt sure then, and so stated, that there was no escape for Jackson. I accordingly sent orders to General McDowell, as also to General King, several times during the night of the 29th, and once by his own staff officer, to hold his ground at all hazards and prevent the retreat of Jackson to the west, and that at daylight in the morning our whole force from Centreville and Manassas Junction would be up with the enemy, who must be crushed between us. I also sent orders to General Kearney to push forward at one o'clock that night cautiously from Centreville along the Warrenton turnpike, to drive in the pickets of the enemy, and to keep closely in contact with him during the night; to rest his left on the Warrenton turnpike and throw his right well to the north, if possible across Little River turnpike; at daylight in the morning to assault vigorously with his right advanced; and that Hooker and Reno would be up with him very shortly after daylight. I sent orders to General Porter, whom I supposed to be at Manassas Junction, where he should have been in compliance with my orders of the day previous, to move upon Centreville at the earliest dawn, and stated to him the position of the forces, and that a severe battle would undoubtedly be
1850 fought during the morning of the 29th. The only apprehension I had at that time was that Jackson might attempt to retreat to the north in the direction of Leesburg, and for the purpose of preventing this I directed Kearney to keep closely in contact with him during the whole of the night of the 28th. My forces were so disposed that McDowell, Sigel, and Reynolds, whose joint forces amounted to about twenty-five thousand men, were immediately west of Jackson and between him and Thoroughfare Gap, whilst Kearney, Hooker, Reno, and Porter, about twenty-five thousand strong, were to fall on him from the east at daylight in the morning or very shortly after. With this disposition of troops we were so far in advance of Longstreet that by using our whole force vigorously we should be able to crush Jackson before Longstreet could by any possibility reach the scene of action. To my great disappointment, however, I learned, towards daylight on the morning of the 29th, that King's division had fallen back in the direction of Manassas Junction, thus leaving open the road to Thoroughfare Gap and making new movements and dispositions of troops immediately necessary.

I submit herewith the reports of Generals King, Gibbon, and Doubleday of the action of the evening of the 28th, as also a detailed report of General McDowell.

The orders directing all these movements are also appended, and they bring the operations of the army up to the 29th of August. The losses of King's division in the action of the evening of the 28th were principally in Gibbon's brigade of that division, and numbered ——. Gibbon's brigade consisted of some of the best troops in the service, and the conduct of both men and officers was gallant and distinguished. The report of General King, herewith appended, exhibits his high opinion of the conduct of this brigade, and of the officers who distinguished themselves in that action.

The disposition of troops on the west of Jackson having failed through Ricketts' movement towards Thoroughfare Gap, and the consequent withdrawal of King, an immediate change in the disposition and proposed movements of the troops for the succeeding day became necessary, and about daylight on the morning of the 29th, shortly after I received information of the withdrawal of King's division, I sent orders to General Sigel, who was in the neighborhood of Groveton, supported by Reynolds, division, to attack the enemy vigorously as soon as it was light enough to see, and bring him to a stand, if it were possible to do so. I instructed General Heintzelman to push forward from Centreville towards Gainesville at the earliest dawn, with the divisions of Hooker and Kearney, and directed General Reno to follow closely in his rear; to use all speed, and as soon as he came up with the enemy to establish communication with Sigel, and attack with the utmost promptness and vigor. I also sent orders to Major-General Fitz-John Porter, at Manassas Junction, to move forward with the utmost rapidity with his own corps and King's division of McDowell's corps, which was supposed to be at that point, upon Gainesville, by the direct road from Manassas Junction to that place. I urged him to make all speed, that he might come up with the enemy and be able to turn his flank near where the Warrenton turnpike is intersected by the road from Manassas Junction to Gainesville. Shortly after sending this order I received a note from General McDowell, whom I had not been able to find during the night of the 28th, dated at Manasses Junction, requesting that King's

division might not be taken from his command. I immediately sent a joint order to Generals McDowell and Porter, directing them, with their two corps, to march with all speed toward Gainesville, on the direct road from Manassas Junction. This order, which is appended, set forth in detail the movements they were directed to make.

Sigel attacked the enemy about daylight on the morning of the 29th, a mile or two east of Groveton, where he was soon joined by the divisions of Hooker and Kearney. Jackson fell back several miles, but was so closely pressed by these forces that he was compelled to make a stand, and to make the best defense possible. He accordingly took up a position with his left in the neighborhood of Sudley Springs, his right a little to the south of Warrenton turnpike, and his line covered by an old railroad grade which leads from Gainesville in the direction of Leesburg. His batteries, which were numerous, and some of them of heavy caliber, were posted behind the ridges in the open ground on both sides of Warrenton turnpike, while the mass of his troops was sheltered in dense woods behind the railroad embankment.

I arrived on the field from Centreville about noon and found the two armies confronting each other, both considerably cut up by the sharp action in which they had been engaged since daylight in the morning. Heintzelman's corps occupied the right of our line, and front or west of the Sudley Springs road. General Sigel was on his left, with his line extended a short distance south of the Warrenton turnpike, the division of General Schenck occupying the high ground to the left of that road. The extreme left was occupied by the division of General Reynolds. General Reno's corps had reached the field, and the most of it had been pushed forward into action, leaving four regiments in reserve and in rear of the center of our line. Immediately after I reached the ground, General Sigel reported to me that his line was weak; that the divisions of Schurz and Steinwehr were much cut up, and ought to be drawn back from the front. I informed General Sigel that this was utterly impossible, as there were no troops to replace them, and that he must hold his ground; that I would
1851 not again push his troops into action, as the corps of Porter and McDowell were moving forward from Manassas Junction on the road to Gainesville, and must very soon be in position to fall upon the enemy's right flank, and probably upon his rear. I rode to the front of our line, and inspected it from right to left, giving the same information to Generals Heintzelman and Reno. The troops were accordingly suffered to rest in their positions and to resupply themselves with ammunition. From twelve o'clock until four, very severe skirmishes occurred constantly at various points on our line, and were brought on at every indication that the enemy made of a disposition to retreat. About two o'clock in the afternoon, several pieces of artillery were discharged on the extreme right of the enemy's line, and I fully believed that Generals Porter and McDowell had reached their positions, and had become engaged with the enemy. I did not hear more than three shots fired, and was at a loss to know what had become of these two corps or what was delaying them; but I received information shortly afterwards that General McDowell was advancing to join the main body by the Sudley Springs road, and would probably be up with us in two hours. At half past four o'clock I sent a peremptory order to General Porter to push forward at once into action on the enemy's right, and, if possible, to turn his rear, stating to him generally the condition of things on the field in front of me. About half past five o'clock, when General Porter should have been coming into action in compliance with this order, I directed Generals Heintzelman and Reno to assault the left of the enemy. The attack was made with great gallantry, and the whole of the left of the enemy was doubled back towards his center, and our forces, after a sharp conflict of an hour and a half, occupied the field of battle, with the dead and wounded of the enemy in our hands. In this attack, Grover's brigade, of Hooker's division, was particularly distinguished by a determined bayonet charge, breaking two of the enemy's lines, and penetrating to the third before it could be checked. By this time, General McDowell had arrived on the field, and I pushed his corps immediately to the front along the Warrenton turnpike, with orders to fall upon the enemy, who was retreating towards the pike from the direction of Sudley Springs. The attack along the turnpike was made by King's division at about sunset in the evening, but by that time the advance of the main body of the enemy, under Longstreet, had begun to reach the field, and King's division encountered a stubborn and determined resistance at a point about three-fourths of a mile in front of our line of battle.

While this attack was going on, the forces of Heintzelman and Reno continued to push back the left of the enemy in the direction of the Warrenton turnpike, so that about eight o'clock in the evening the greater portion of the field of battle was occupied by our army. Nothing was heard of General Porter up to that time, and his forces took no part whatever in the action, but were suffered by him to lie idle on their arms, within sight and sound of the battle during the whole day. So far as I know, he made no effort whatever to comply with my orders or to take any part in the action.

I do not hesitate to say if he had discharged his duty as became a soldier under the circumstances, and had made a vigorous attack on the enemy, as he was expected and directed to do, at any time up to eight o'clock that night, we should have utterly

crushed or captured the larger portion of Jackson's force before he could have been by any possibility sufficiently reinforced to have made any effective resistance. I did not myself feel for a moment that it was necessary for me, having given General Porter an order to march towards the enemy in a particular direction, to send him, in addition, specific orders to attack, it being his clear duty, and in accordance with every military precept, to have brought his forces into action wherever he encountered the enemy, when a furious battle with that enemy was raging during the whole day in his immediate presence. I believe—in fact, I am positive—that, at five o'clock in the afternoon of the 29th, General Porter had in his front no considerable body of the enemy. I believed then, as I am very sure now, that it was easily practicable for him to have turned the right flank of Jackson, and to have fallen upon his rear; that, if he had done so, we should have gained a decisive victory over the army under Jackson before he could have been joined by any of the forces of Longstreet; and that the army of General Lee would have been so crippled and checked by the destruction of this large force as to have been no longer in condition to prosecute further operations of an aggressive character. I speak thus freely of the strange failure of General Porter, not because I am more convinced of its unfortunate results now than I was at the time, but because a full investigation of the whole subject made by a court-martial has fully justified and confirmed that opinion.

Our losses during the 29th were very heavy, but no separate returns of killed and wounded for that day have been made to me. I believed, from all I could learn from corps commanders, and so reported, that our loss during that day was not less than six or eight thousand killed and wounded, and I think this estimate will be confirmed by the general reports which cover the losses during the battles of the 27th, 28th, 29th, and 30th of August, and the 1st of September. My estimate of the loss of the enemy, reported to the department on the morning of the 30th, was based upon the statements made to me by Generals Hooker and Kearney, who had been over the whole
1852 field on the left. General Hooker estimated the loss of the enemy as at least two to one, and General Kearney as at least three to one of our own.

Every indication during the night of the 29th and up to ten o'clock on the morning of the 30th, pointed to the retreat of the enemy from our front. Paroled prisoners of our own, taken on the evening of the 29th and who came into our lines on the morning of the 30th, reported the enemy retreating during the whole night in the direction of and along the Warrenton turnpike. Generals McDowell and Heintzelman, who reconnoitered the positions held by the enemy's left on the evening of the 29th, confirmed this statement. They reported to me that the positions occupied by the enemy's left had been evacuated, and that there was every indication that he was retreating in the direction of Gainesville.

On the morning of the 30th, as may be supposed, our troops, who had been so continually marching and fighting for so many days, were in a state of great exhaustion. They had had little to eat for two days previous, and artillery and cavalry horses had been in harness and saddled continually for ten days, and had had no forage for two days previous. It may easily be imagined how little these troops, after such severe labors, and after undergoing such hardships and privation, were in condition for active and efficient service. I had telegraphed to the General-in-Chief on the 28th our condition, and had begged of him to have rations and forage sent forward to us from Alexandria with all dispatch. I also called his attention to the imminent need of cavalry horses to enable the cavalry belonging to the Army to perform any service whatever. About daylight of the 30th I received a note from General Franklin, herewith appended, written by direction of General McClellan, and dated at 8 o'clock p. m. on the 29th, informing me that rations and forage would be loaded into the available wagons and cars at Alexandria as soon as I would send back a cavalry escort to bring out the trains. Such a letter, when we were fighting the enemy, and Alexandria was swarming with troops, needs no comment. Bad as was the condition of our cavalry, I was in no situation to spare troops from the front, nor could they have gone to Alexandria and returned within the time by which we must have had provisions or have fallen back in the direction of Washington. Nor do I yet see what service cavalry could have rendered in guarding railroad trains. It was not until I received this letter that I began to feel discouraged and nearly hopeless of any successful issue to the operations with which I was charged; but I felt it to be my duty, notwithstanding the desperate condition of my command, from great fatigue, from want of provisions and forage, and from the small hope that I had of any effective assistance from Alexandria, to hold my position at all hazards and under all privations, unless overwhelmed by the superior forces of the enemy. I had received no sort of information of any troops coming forward to my assistance since the 24th, and did not expect on the morning of the 30th, that any assistance would reach me from the direction of Washington; but I determined again to give battle to the enemy on the 30th, and at least to lay on such blows as would cripple him as much as possible, and delay as long as practicable any further advance toward the capital. I accordingly prepared to renew the engagement.

At that time my effective forces, greatly reduced by losses in killed, wounded, missing, and broken-down men during the severe operations of the two or three days and nights previous, the sharp actions of Hooker, King, and Ricketts on the 27th and 28th, and the furious battle on the 29th, were estimated by me and others as follows: McDowell's corps, including Reynolds' division, 12,000 men; Sigel's corps, 7,000; Reno's corps, 7,000; Heintzelman's corps, 7,000; Porter's corps, which had been in no engagement, and was, or ought to have been, perfectly fresh, I estimated at about 12,000 men, including the brigade of Piatt, which formed a part of Sturgis' division, and the only portion that ever joined me. But of this force the brigades of Piatt and Griffin, numbering, as I understood, about 5,000 men, had been suffered to march off at daylight on the 30th to Centreville, and were not available for operations on that day. This reduced Porter's effective force in the field to about 7,000 men, which gave me a total force of 40,000 men. Banks' corps, about 5,000 strong, was at Bristoe Station, in charge of the railroad trains and of a portion of the wagon trains of the army still at that place.

Between 12 and 2 o'clock in the day I advanced the corps of Porter, supported by King's division of McDowell's corps, to attack the enemy along the Warrenton turnpike; at the same time I directed Heintzelman and Reno, on our right, to push forward to the left and front toward Warrenton turnpike, and attack the enemy's left in flank if possible. For a short time Ricketts' division of McDowell's corps was placed in support of this movement on our right.

It was necessary for me to act thus promptly and make an attack, as I had not the time, for want of provisions and forage, to await an attack from the enemy; nor did I think it good policy to do so under the circumstances. During the whole night of the 29th and the morning of the 30th the advance of the main body under Lee was arriving on the field to re-enforce Jackson, so that by twelve or one o'clock in the day we were confronted by forces greatly superior to our own, and these forces were
1853 being every moment largely increased by fresh arrivals of the enemy from the direction of Thoroughfare Gap. Every moment of delay increased the odds against us, and I therefore advanced to the attack as rapidly as I was able to bring my forces into action. Shortly after General Porter moved forward to the attack along the Warrenton turnpike, and the assault on the enemy was made by Heintzelman and Reno on the right, it became apparent that the enemy was massing his troops, as fast as they arrived on the field, on his right and was moving forward from that direction to turn our left, at which point it was plain he intended to make his main attack. I accordingly directed General McDowell to recall Ricketts' division immediately from our right and post it on the left of our line with its left refused. The attack of Porter was neither vigorous nor persistent, and his troops soon retired in considerable confusion. As soon as they commenced to fall back the enemy advanced to the assault, and our whole line from right to left was soon furiously engaged. The main attack of the enemy was made upon our left, but was met with stubborn resistance by the divisions of General Schenck, General Milroy, and General Reynolds, who, shortly after the action began, were re-enforced on the left and rear by the whole of Ricketts' division. The action raged furiously for several hours, and the enemy bringing up his heavy reserves, and pouring mass after mass of his troops upon our left. So greatly superior in number were his forces, that, while overpowering us on our left, he was able to assault us also with superior forces on our right. Porter's forces were rallied and brought to a halt as they were retiring to the rear. As soon as they could be used, I pushed them forward to support our left, and they there rendered most distinguished service, especially the brigade of regulars under Colonel Buchanan.

Tower's brigade of Ricketts' division was pushed forward into action in support of Reynolds' division, and was led forward in person by General Tower with conspicuous skill and gallantry. The conduct of that brigade, in plain view of all the forces on our left, was especially distinguished, and drew forth hearty and enthusiastic cheers. The example of this brigade was of great service, and infused new spirit into all the troops who witnessed their intrepid conduct. Reno's corps was also withdrawn from its position on our right center late in the afternoon, and thrown into action on our left, where it behaved with conspicuous gallantry.

Notwithstanding these great disadvantages, our troops held their ground with the utmost firmness and obstinacy. The loss on both sides was very heavy. By dark our left had been forced back about half or three-quarters of a mile, but still remained firm and unbroken, and still covered the turnpike in our rear.

About six o'clock in the afternoon I heard accidentally that Franklin's corps had arrived at a point about four miles east of Centreville and twelve miles in our rear, and that it was only about 8,000 strong.

The results of the battle of the 30th, the very heavy losses we had suffered, and the complete prostration of our troops from hunger and fatigue, made it plain to me that we were no longer able, in the face of such overwhelming odds, to maintain our position so far to the front; nor would we have been able to do so under any circumstances, suffering as were the men and horses from fatigue and hunger, and weakened by the heavy losses incident to the uncommon hardships which they had suffered.

About eight o'clock at night, therefore, I sent written instructions to the commanders of corps to withdraw leisurely toward Centreville, and stated to them what route each should pursue, and where they should take post. General Reno was instructed, with his whole corps, to cover the movement of the army toward Centreville. The withdrawal was made slowly, quietly, and in good order, no pursuit whatever having been attempted by the enemy. A division of infantry, with its batteries, was posted to cover the crossing at Cub Run.

* * * * * * *

I am, General, very respectfully, your obedient servant,

JNO. POPE,
Major-General United States Volunteers.

To Brig.-Gen'l G. W. CULLUM,
Chief of Staff and of Engineers, Headquarters of the Army,
Washington, D. C.

Petitioner's counsel also introduced the following dispatch:

WARRENTON JUNCTION, *August* 27, 1862—5 p. m.

I am just leaving for Bristoe Station. The enemy retired from the railroad before Hooker's advance, having burned no bridges and done no damage that cannot be speedily repaired. Reno will reach Greenwich to-night. Heintzelman follows after him. Porter, with his whole corps, moves behind Heintzelman. My headquarters to-night will be with Heintzelman.

JOHN POPE.

Major-General MCDOWELL.

1854 The following dispatches are taken from Major-General Pope's foregoing report:

HEADQUARTERS, BRISTOE,
August 27, 1862—9 o'clock p. m.

At the very earliest blush of dawn, push forward with your command with all speed to this place. You cannot be more than three or four miles distant. Jackson, A. P. Hill, and Ewell are in front of us. Hooker has had a severe fight with them to-day. McDowell marches upon Manassas Junction from Gainesville to-morrow at daybreak; Reno upon the same place at the same hour. I want you here at daydawn, if possible, and we shall bag the whole crowd. Be prompt and expeditious, and never mind wagon-trains or roads till this affair is over. Lieutenant Brooks will deliver you this communication. He has one for General Reno and one for General McDowell. Please have these dispatches sent forward instantly by a trusty staff officer, who will be sure to deliver them without fail; and make him bring back a receipt to you before daylight. Lieutenant Brooks will remain with you and bring you to this camp. Use the cavalry I send you to escort your staff officer to McDowell and Reno.

JNO. POPE,
Major-General Commanding.

Major-General KEARNEY.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

HEADQUARTERS ARMY OF VIRGINIA,
Bristoe Station, August 27, 1862—9 o'clock p. m.

At daylight to-morrow morning march rapidly on Manassas Junction with your whole force, resting your right on the Manassas Gap Railroad, throwing your left well to the east. Jackson, Ewell, and A. P. Hill are between Gainesville and Manassas Junction. We had a severe fight with them to-day, driving them back several miles along the railroad. If you will march promptly and rapidly at the earliest dawn of day upon Manassas Junction we shall bag the whole crowd. I have directed Reno to march from Greenwich at the same hour upon Manassas Junction, and Kearney, who is in his rear, to march on Bristoe at daybreak. Be expeditious, and the day is our own.

JNO. POPE,
Major-General, Commanding.

Major-General MCDOWELL.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

EXTRACTS.

[From Appendixes to Major-General Pope's Report of January 27, 1863, p. 38.]

WARRENTON JUNCTION, *August* 26, 1862—8.10 a. m.

Major-General McDOWELL: I sent instructions last night to make a strong reconnaissance across to Sulphur Springs, intending that Sigel should do the same thing at Waterloo Bridge, and Reno at Rappahannock. Sigel reports himself unable to do anything of the kind until his men are rested. I directed him to halt them somewhere near Warrenton, and put them in camp for a day. Reno, instead of going to Bealeton and then to Kelly's Ford, has come to this place, and is now near here. You must, therefore, under these circumstances, exercise your discretion about the reconnaissance to Sulphur Springs, but it will certainly be well for you to ascertain what there is in the direction of Waterloo Bridge, and still further to your right. Send for Milroy; he is a courageous man. * * * If you deem it necessary, assume command, also, of Sigel's corps. It is essential that we should watch the movements of the enemy towards our right in some manner. Out of Buford's, Bayard's, and Sigel's cavalry enough can certainly be found to perform this service. Troops are accumulating here, but not very fast. Take charge of the front, and use everybody you find there.

JNO. POPE,
Major-General Commanding.

P. S.—I will push Reno to Fayetteville. It will be well to have the men cook three days' rations. Please notify Banks and Sigel.

J. P.

1855 [General Pope's Report January 27, 1863, p. 196.]

WARRENTON, *August* 26, 1862.

I have just received your telegram of 8.10 a. m. informing me of the inability of Reno and Sigel to make the reconnaissances ordered at Rappahannock and Waterloo, and leaving it discretionary with me, under the circumstances, to make the reconnaissances by my whole corps at Sulphur Springs, but saying it will certainly be well for me to ascertain what there is in the direction of Waterloo Bridge and further to my right, and authorizing me to assume command of General Sigel's corps, &c.

Before receiving this I had, under instructions of last night, concentrated all my command on the Sulphur Springs road to make the movement ordered at that place. General Sigel, returning from the position of Waterloo, leaves the road from that place to Warrenton but feebly held by a regiment of infantry from Reynolds and one of cavalry from Buford. The country from Sulphur Springs and up to and beyond Waterloo is covered with the dust of a large moving mass. The head of my column has reached Sulphur Springs and a brisk cannonading is now going on. I have sent out to learn where General Sigel's troops are. They were, it seems, passing through town all last night. Buford and Bayard both report their cavalry as broken down. The former says his is disorganized; the latter, that his will neither charge nor stand a charge. I had, under the discretion you gave me, decided not to throw my whole corps on to Sulphur Springs, but to place it substantially in the position indicated in general orders, and to push as strong a force as I can spare towards Waterloo; and if I can gather a force of cavalry that can perform any service, to endeavor to feel the enemy's right. If it is possible forage should be sent forward, as all our artillery and trains as well as cavalry will go. My men have two days' rations in their haversacks, and, being on the march, they cannot cook the three days' you desire. General Banks, I am told, is at Bealeton. Sigel, I just learn, is at Warren Green Hotel, by an officer just from General King. Firing is maintained by the enemy at Sulphur Springs from two four-gun batteries.

IRVIN McDOWELL.

Major-General POPE.

EXTRACT FROM THE REPORT OF MAJOR-GENERAL POPE'S REPORT TO THE COMMITTEE ON THE CONDUCT OF THE WAR, SUPPLEMENTAL VOL. II, 1865.

* * * * * * *

In the narrative of my connection with military operations in Virginia I have reached a point where it is equally difficult to continue or to be silent. While, perhaps, it would not be judicious to recount all that occurred between the 2d and the 7th of September, 1862, yet some account of the extraordinary transactions of those few days

seems to be demanded in justice to myself and others. I shall pass as briefly over the matter as I possibly can, and only relate what seems to be entirely indispensable to anything like an understanding of the subject. After withdrawing within the outer intrenchments around Washington, the command of the troops, in compliance with orders from General Halleck, passed into the hands of General McClellan. I made my personal camp at Ball's Cross-Roads, and on the morning of the —— of September repaired to Washington with a few officers of my staff, and reported in person to the General-in-Chief, the Secretary of War, and the President. Each one of these high functionaries received me with great cordiality, and expressed in the most decided manner his appreciation of my services and of the conduct of my military operations.

Great indignation was expressed at the treacherous and unfaithful conduct of officers of high rank who were directly or indirectly connected with these operations, and so decided was this feeling, and so determined the purpose to execute justice upon them, that I was urged to furnish for use to the government immediately a brief official report of the campaign. So anxious were the authorities that this report should be in their possession at once, that General Halleck urged me to remain that day in Washington and make it out. I told him that my papers, dispatches, &c., were at my camp near Ball's Cross-Roads and that I could not well make a report without having them by me. He still urged me to remain with great persistence, but I finally returned to my camp and proceeded to make out my report.

The next day it was delivered to General Halleck, but by that time influences of questionable character, and transactions of most unquestionable impropriety, which were well known at the time, had entirely changed the purposes of the authorities. It is not necessary, and perhaps would scarcely be in place, for me to recount these things here, and I shall therefore only speak of results which followed. The first result was that my report, so urgently demanded the day before in order that the
1856 facts might at once be laid before the country and made the basis of such action as justice demanded, it was resolved to suppress it.

* * * * * * *

Within two months it was actually found necessary to depose General McClellan from his command, and bring Fitz-John Porter to trial.

* * * * * * *

I considered it a duty I owed to the country to bring Fitz-John Porter to justice, lest at another time and with greater opportunities he might do that which would be still more disastrous. With his conviction and punishment ended all official connection I have since had with anything that related to the operations I conducted in Virginia.

[General Pope's Report to the Committee on the Conduct of the War, p. 137.]

HEADQUARTERS THIRD CORPS, *August* 25—11.25 a. m.

COLONEL: Inclosed you will please find reports by Colonel Clark, aide-de-camp, from the signal corps station, of the movements of the enemy on the south side of Hedgeman or Rappahannock River. The facts are reported as having been observed by himself and can be relied upon as being as near the truth as the distance will permit. It seems to be apparent that the enemy is threatening or moving upon the valley of the Shenandoah via Front Royal, with designs upon the Potomac, possibly beyond. Not knowing whether you have received this information, I forward it for the consideration of the commanding general.

Respectfully, &c.,

N. P. BANKS,
Major-General Commanding.

Colonel RUGGLES,
Assistant Adjutant-General and Chief of Staff.

A true copy.

T. C. H. SMITH,
Lieutenant Colonel and Aide-de-Camp.

[General Pope's Report to the Committee on the Conduct of the War, p. 138.]

UNITED STATES MILITARY TELEGRAPH.

Received August 26, 1862, from headquarters Third Army Corps, 3.30 p. m., Warrenton.

General Sigel's bridge-train has arrived. I think it may be useful. General Miloy burnt the bridge at Waterloo before he retired from that place last night, and Buford says the fords near Waterloo are bad. I have directed the available forces of Sigel's cavalry, with a section of his artillery, to report to General Buford this afternoon on the Waterloo road, with three days' cooked rations. I have directed Buford to march

at dawn to-morrow towards Chester Gap to ascertain what direction the enemy has taken on our right, whether to Rectortown or Front Royal through Chester Gap. He will either take the Carter Church road up the left bank of Carter's Run or the road direct from this place to Chester Gap, as inquiries to be made this afternoon shall determine. However persons may have differed as to the force at Waterloo, Sulphur Springs, or elsewhere, all agree in one thing—the movement of the enemy towards our right from Rappahannock to Waterloo. Battalions, trains, batteries, all have the same direction. The force of the enemy now seems to be above Sulphur Springs.

Under these views, in addition to Sigel's corps now here, I beg to suggest that Hooker and Kearney be marched at once in this direction instead of the direction of Rappahannock Station; for whether we attack them or they attack us, the contest must come off, it seems to me, as things now stand, above rather than below Sulphur Springs. If they could make a march this afternoon towards either Sulphur Springs or Waterloo Bridge, it would be a movement, I think, in the right direction. What is the enemy's purpose is not easy to discover. Some have thought he means to march around our right, through Rectortown, to Washington; others think he intends going down the Shenandoah, either through Thornton's or Chester Gap. Either of these operations seems to me too hazardous for him to undertake with us in his rear and flank. Others that it was his object to throw his trains around into the valley to draw his supplies from that direction, and have his front looking to the east rather than to the north. It is also thought that whilst a portion of his force has marched up the immediate right bank of the Rappahannock, a larger portion has gone through Culpeper up the Sperryville road. No doubt these various suppositions may have occurred to you, but I have thought it not inappropriate to recapitulate them here with reference to concentrations of forces in this direction which I have herein suggested. Cannonading at Sulphur Springs still continues about the same. I have ordered Buford to send you a regiment of cavalry. I cannot get hold of Bayard.

IRVIN McDOWELL.

1857 [Report to Committee on Conduct of the War, p. 138.]

I have just received your telegrams of 2.20 and 3.15 p. m. I trust that Buford's reconnaissances to-morrow will obtain the information you desire concerning the movements of the enemy across the Sperryville pike in the direction of Gaines' Cross-Roads and Salem. I also received from General Banks' signal officer the account of this movement. With reference to your inquiries as to what has occurred to make the presence of Cox here desirable, I made the suggestion, first, because in the general order issued he was ordered to join Sigel at Fayetteville. As Sigel was here, and as I understood Cox was arriving in the cars, I thought if it could be done time would be gained by his being landed here rather than Warrenton Junction.

IRVIN McDOWELL,
Maj. Gen'l Commanding.

Maj. Gen'l POPE.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

[Report to Committee on Conduct of the War, p. 132.]

HEADQUARTERS ARMY OF VIRGINIA,
Rappahannock Station, Aug. 23, 1862—9 o'clock a. m.

The heavy storm of yesterday and last night has caused the river to rise six feet. There are no longer any fords, and the bridges are carried away. I succeeded in time in withdrawing my advanced forces from the south side of the river. The movement across the river on the enemy's flank and rear is therefore impossible. The enemy's forces on this side, which have crossed at Sulphur Springs and Hedgeman's River, are cut off from those on the south side. I march at once with my whole force on Sulphur Springs, Waterloo Bridge, and Warrenton, in the hope to destroy these forces before the river runs down. The rain still continues and I think we are good for thirty-six hours. As soon as I have effected this purpose, which I hope to do by an early hour to-morrow, I shall move back, detaching a large force to reopen my communications at Catlett's, and send forward supplies. If Heintzelman and Cox move quickly it will be easy to hold the Rappahannock, leaving the enemy much damaged by his attempt to turn our right. You may not hear from me before to-morrow night.

JNO. POPE, *Major-General.*

Major-General HALLECK.

A true copy.

T. C. H. SMITH,
Lieutenant-Colonel and Aide-de-Camp.

AUGUST 26, 1862.

I have just received your telegram of 5 o'clock a. m. directing me to ascertain in some way or another whether the enemy be really in force at Waterloo Bridge. My corps, as ordered, is on the march to Sulphur Springs, and I start in a few moments myself. When I get there I will endeavor to ascertain what you wish.

IRVIN McDOWELL.

Major-General POPE.

WARRENTON JUNCTION, *August* 26, 1862.

General King reports he has received a flag of truce from General Anderson to return a woman dressed in man's clothes captured by them this morning. I report the circumstance, as it is the first information I have of the presence of this division in our immediate front. I understand Anderson to have Huger's former division. This division, so far as I have learned, was the last of those now before us to leave Richmond, and was at Louisa Court-House when Longstreet was at Raccoon Ford. If I am right in these suppositions, it seems to strenghen the impression that I have that the enemy's extreme right rests at Sulphur Springs. I draw another inference from this flag of truce, that there is at least a division at Sulphur Springs. It is true these are mere inferences, and I only give them as such, for other divisions than those we have heretofore heard of may have left Richmond since our last information.

IRVIN McDOWELL.

Major-General POPE, *Warrenton Junction.*

WARRENTON JUNCTION, *August* 26, 1862—5 a. m.

General McDOWELL: Please ascertain in some way whether the enemy be really in force at Waterloo Bridge. Sigel insists that he is; while Banks, who was there late
1858 yesterday afternoon, asserts positively that there was no enemy during the day there. You will easily see how important it is for us to know positively what has become of the enemy's force which was in front, and where the column has gone which took yesterday the road towards Salem. Please use every means possible to ascertain this at once. Reno will cross at Rappahannock Station and puch forward a reconnaissance to Culpeper. I wish you would send me a regiment of cavalry. I have not a mounted man here. Send me one of Buford's or Bayard's.

JOHN POPE.
Major-General Commanding.

HEADQUARTERS THIRD ARMY CORPS,
Warrenton, August 26, 1862—9 p. m.

An intelligent negro has just come in to General Buford from White Plains, and reports the advance of the enemy's column at that place. He says he saw himself at White Plains to-day at twelve o'clock two batteries of artillery, two regiments of cavalry, and four regiments of infantry, and that they were marching in the direction of Thoroughfare Gap. The man's report is evidently to be relied upon, and General Buford says his statements are confirmed by his scouts, who report large trains passing up through Orleans to White Plains.

I. McDOWELL.

General POPE, *Warrenton Junction.*

WARRENTON, *August* 26—10 p. m.

One of Sigel's scouts reports that since daylight till four o'clock this evening there has been a continuous line of troops, although cavalry chiefly, passing forward to White Plains, where they are encamped now—Generals Jackson, Longstreet, and A. P. Hill, and Stuart's cavalry. This man has the same story as to the names of the generals who are passing towards Thoroughfare. If you fear any attack in force by the enemy's coming through Thoroughfare Gap, and you should not get your force in time at Gainesville, I wish to remark that Centreville and Manassas are fortified, the former sufficiently so to offer a stout resistance, and the latter enough to aid materially raw troops. If the enemy are playing a game on us, and we can keep down the panic which their appearance is likely to create in Washington, it seems to me the advantage of position must all be on your side. I trust sufficient food and ammunition and forage may get through by to-morrow. We have wasted a good deal of artillery ammunition.

IRVIN McDOWELL.

Major-General POPE,
Warrenton Junction.

HEADQUARTERS OF THE ARMY OF VIRGINIA,
August 26, 1862—5.30 a. m.

I have just heard from Fitz-John Porter. He has neither wagons nor provisions, and only forty rounds of ammunition per man. The troops here have no wagons and are

very scarce of provisions. The railroad is interrupted between here and Manassas, and will require a strong force to repair it and keep it open. Meantime we shall suffer for everything. It therefore appears to me that we had best move, with our whole force, to occupy Gainesville, so as to secure our communication with Alexandria. It does not seem to me possible to hold a position so far to the front as Warrenton, while so heavy a column of the enemy is so near to our concentration—much in front of Manassas. Give me your views immediately on the subject, for we must act promptly in some way. At all events, all wagons not needed for ammunition must be got ready for an immediate movement to the rear. Let me hear from you at once.

JNO. POPE,
Major-General Commanding.

General McDowell.
(No record of General McD.'s answer to this.)

WARRENTON JUNCTION, *August* 27, 1862—8.30 a. m.

Execute the movement you suggest, but you must be careful not to let the enemy know it until the last moment. Send the trains by this way, and call Banks to you. If the movement could be made by dark it would be better. I will open the road and join you as soon as I can. I do not know that it will be safe to wait, but you can tell better than I, as your scouts and lookouts can see the movements of the enemy. Order Banks to send his train off immediately, and also the trains you have. We must get to Gainesville to night.

JNO. POPE,
Major-General Commanding.

Major-General McDowell.

1859 You had best load all the cars at Warrenton, and send back all the surplus stores fast as possible.

POPE.

Reply.

I have given such orders.

I. McD.

* * * * * * *

What division of force will you leave at Warrenton Junction till the baggage wagons shall have passed?

Answer. I cannot tell yet, but one division I will leave. You need not send the three batteries till I communicate with you further. I fear they may be in some danger. Have all the stores you do not need loaded into the cars and sent down here immediately. The enemy has burned a bridge over Cedar Run. Our left wing, therefore, rests at that place until we can have the bridge repaired. Hurry up the wagons with all speed to this place.—[POPE.]

Send me an officer, if you have him, who knows the country between Catlett's Station and Gainesville.

Question. Had not Banks better retire by way of Warrenton Junction, preceded by his train?

Answer. He can do so, but please send him the order from Warrenton, as he is nearer to you, and I have got no cavalry.—[POPE.]

Reynolds reports from Sulphur Springs that the indications are that the enemy has left that place. Sigel's advance is on march for Buckland Mills. I am anxious he should get that point, as it is of importance. Sigel thinks the enemy has passed Salem. I do not think he can yet have done it. I have this instant received the following from the signal-officer on Watery Mountain:

"No sign of enemy at Jefferson; his wagons have left there. A wagon train and a line of troops northwest of this mountain moving towards Chester Gap."

Question. What became of that regiment of cavalry I directed you to send me yesterday?—[POPE.]

Answer. I ordered you one from Buford, because I could not get hold of Bayard. Not having heard whether he has done so, I have this morning, to make sure, ordered Bayard to send you the Maine Regiment, and it marches immediately. This may result in your having two regiments.—[I. McD.]

Question. Have you sent the orders to Banks that I requested you to send?

Answer. Yes; to move upon Catlett's, preceded by his train—[I. McD.]

WARRENTON JUNCTION, *August* 27, 1862—1.45 p. m.

Reno has his instructions, and is ahead of his wagon trains.

JOHN POPE,
Major-General Commanding.

General McDowell.

WARRENTON JUNCTION, *August* 27, 1862—5 p. m.

I am just leaving for Bristoe Station. The enemy retired from the railroad before Hooker's advance, having burned no bridges and done no damage that cannot be speedily repaired. Reno will reach Greenwich to-night. Heintzelman follows after him. Porter, with his whole corps, moves behind Heintzelman. My headquarters to-night will be with Heintzelman.

JOHN POPE.

Major-General MCDOWELL.

No. 64.

Appendix A to General Pope's report.

WARRENTON, *Tuesday, August* 26 1862—1.45 a. m.

I went on top Water Mountain yesterday afternoon to see if anything could be seen of the enemy. The only indications I saw were his camp-smokes. These extended from Sulphur Springs back beyond Jefferson, and from Sulphur Springs up the river beyond Waterloo. I will direct Ricketts' division up the river at Sulphur Springs; but as the ground opposite the ford at this place is a low flat, extending back from the river nearly half of a mile, and closed by an amphitheater of hills, I will, if the enemy be there in force, endeavor to occupy him by Ricketts' division while I pass King's over the river below, at the fords at Fant's or Fox's Mills. I will endeavor, as these lower fords may not be good, to get hold of part of Sigel's bridge-trains, so as to make the passage free as possible. Part of General Sigel's force, under previous
1860 orders, is passing through the town at this moment. The general himself has not come in. My aide-de-camp is searching for him in the front with his orders.

IRVIN MCDOWELL.

Major General POPE,
Warrenton Junction.

[From report of the Committee on the Conduct of the War, p. 139.]

UNITED STATES MILITARY TELEGRAPH.

Received August 26, 1862, from near Waterloo Bridge, 2.45 p. m.

Trains and troops still passing over the same route. A deserter just come in says Longstreet's corps, embracing Anderson's, Jones', Kemper, Whiting's, and Evans' divisions, are located in the woods back of Waterloo Bridge. Thinks Hill's division at Jefferson. Jackson's corps somewhere above Longstreet's. He appears truthful, and I credit his story. The entire district from Jefferson to Culpeper, Sperryville, and as far as Barber's, covered with smoke and lines of dust. The deserter reports the arrival last evening of the greater portion of Longstreet's corps at its present position.

JOHN S. CLARK,
Col. and Aide-de-Camp.

Gen. POPE.

A true copy.

J. C. H. SMITH,
Lieut. Col. and Aide-de-Camp.

[From General Stahel's report, p. 100 of General Pope's report.]

On the 30th of August, the first brigade remained in position in its camp, about 400 paces behind Dogan's farm, up to 1 o'clock p. m., till I received orders from Major-General Sigel to take position on the crescent of the hill by the side of Dogan's farm.

[Extract from report of Col. N. C. McLean, commanding brigade, p. 101 of General Pope's report.]

HEADQUARTERS SECOND BRIGADE, FIRST DIVISION,
Camp at Centreville, September 1, 1862.

GENERAL: I have the honor to report, so far as concerning the active participation of the second brigade in the battle of August 30, as follows:

The brigade had been placed in position on the evening of August 29, with the left resting on the Warrenton road, and remained there until the afternoon of August 30, when, by order, I detailed the Fifty-fifth Ohio Regiment to occupy a position on the left of the Warrenton road.

* * * * * * *

[Extract from report of General Carl Schurz, p. 112 of General Pope's report.]

Heavy re-enforcements were constantly arriving and led to the front. If all these forces, instead of being frittered away in isolated efforts, had co-operated with each other at any one moment after a common plan, the result of the day would have been far greater than the mere retaking and occupation of the ground we had already taken and occupied in the morning, and which in the afternoon was, for a short time at least, lost again. My men, with very few exceptions, behaved well. The line my weak regiments had to take and to hold was so extensive that double the number of troops would, under ordinary circumstances, be hardly considered sufficient to perform the task. That they did perform it for many hours, without flinching, until the arrival of ample re-enforcements made their relief possible, speaks well for their courage and intrepidity.

[From General Lee's report, Rebellion Record, p. 278, vol. 9.]

In the series of engagements on the plains of Manassas more than 7,000 prisoners were taken, in addition to about 2,000 wounded left in our hands. Thirty pieces of artillery, upward of 20,000 stand of small-arms, numerous colors, besides those taken by General Jackson at Manassas Junction, were captured.

[From General Longstreet's report, Rebellion Record, p. 571, 2d col., vol. 9.]

The next day, like the day after the first battle of Manassas Plains, was stormy and excessively disagreeable. Orders were given early in the day for caring for the wounded, burying the dead, and collecting arms and other supplies.

1861 EXTRACTS FROM CONFEDERATE REPORTS RELATIVE TO OPERATIONS OF AUGUST 29 AND 30, 1862.

UNITED STATES OF AMERICA:

WAR DEPARTMENT, *Washington City, March* 10, 1879.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of and extracts from original reports on file in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the War Department to be affixed, on the day and year first above written.

[SEAL.] GEO. W. McCRARY,
Secretary of War.

I.

HD. QRS. HOLCOME LEGION S. C. V.,
Near Winchester, Va., Oct. 13*th*, 1862.

Captain A. L. EVANS, A. A. G.

[Extract.]

CAPTAIN: * * * * * *

On the 29th of August, after a fatiguing day's march, my regiment, with the rest of the brigade, was put in line of battle in support of Gen'l Hood's brigade. The line was scarcely formed when the order was given, Forward. The obscurity of the hour caused me to separate from the brigade, but I moved foward until within a few yards of the enemy's camp fires. I was met by a messenger who assured me that the camp was already occupied by a Texas regiment. Halting, I sent a messenger to report to Gen'l Evans. On the march and during the halt several prisoners were taken by my men, among them one captain and one lieutenant, both wounded. Upon orders from Gen'l Evans, I withdrew with the 18th S. C., which had got somewhat in advance of me. Sleeping upon our arms that night, we were further withdrawn just before day to near the position from which we had advanced the night before. Later in the day we were again placed in battle order at the same point (*i. e.* the N. E. edge of a wood some 2½ miles from Gainesville, on the southern side of the turnpike passing from that village by Groveton), and again in support of Hood's brigade, which was posted in the skirt of woods some 200 yards to our front.

* * * * * * *

Very respectfully, your obt. serv't,

P. F. STEVENS,
Col. Hol'm Leg'n S. C. V.

II.

CAMP NEAR WINCHESTER, VA., *Oct.* 20, 1862.

To Gen. N. G. EVANS:

[Extract.]

SIR: * * * * * *

On the 29th of Aug. were ordered to advance in direction of the firing about 7 o'clock p. m. On the march, Parker, private in Co. F, was killed. We were not allowed to fire, as one of our own regiments was in advance, and as it was too dark to distinguish the enemy. After resting on our arms until 10 a. m., we were ordered to retire and occupy a position in rear of Gen. Hood's brigade.

* * * * * * *

Respectfully submitted.

F. W. McMASTER, *Col. 17th S. C. V.*

OCT. 20, 1862.

III.

CAMP NEAR WINCHESTER, *October* 21, 1862.

CAPTAIN: In obedience to instructions from Brigade Head Q'r's, I have the honor to report, on Friday, 29th August, 1862, the 18th S. C. V., under the command of Col. J. M. Gadberry, and constituting a part of Gen'l Evans' brigade, arrived near the famous battle-field of Manassas. At the time of the arrival of the regiment a battle was in progress between Confederate forces and the enemy. The 18th S. C. V. was halted in the road just out of the range of the shot and shell of the enemy. In a short time it was marched to the right of the road in the field and advanced into a 1862 body of woods that was occupied at the time by Hood's brigade, the battle all the while raging in my front. Pausing a moment in these woods, we went by a flank across the oval we had left and upon the edge of the open ground that was the theatre of conflict. Having cleared the road which was being shelled by the enemy, we marched to the front in line of battle, and entered the open battle-ground and advanced at double quick time towards the position of the enemy. Having advanced half way across the open ground and finding no enemy we crossed the road to the right again in the direction of heavy firing. Immediately after crossing, and our front being unmasked of some houses that intervened between us and the enemy, we received a sharp volley of musketry from a heavy body of the enemy immediately in our front. We paused but a moment while returning the fire, and then charged with shouts in double quick time, and the enemy fled in disorder.

As we were thus rapidly advancing, Texas and Georgia regiments debouched from the woods upon our right and joined us in the pursuit of the enemy. Darkness had now come on, but the pursuit and desultory firing continued. We passed rapidly over the ground that had been occupied by the enemy and down a steep declivity, upon the crest of which their line of battle had been formed, and at the bottom of which we captured several prisoners, who cheered our men as we passed on, saying, "Go in, boys; go on, go on, we are yours; take the balance." We continued to press forward until we had crossed the creek and ascended the hill upon the opposite side. The 18th S. C. V. having been separated from the rest of the brigade in the darkness, and being far in advance, the regiment was halted upon the crest of the hill upon the side of the creek next to the enemy, and here we remained until orders were conveyed to us from Brigadier General Evans to retire and take up a position for the next day's contest, which all knew was coming and would be severe. Before daylight we were in position in the edge of the skirt of woods we had left the afternoon before to attack the enemy.

* * * * * * *

I have the honor to be, very respectfully,

W. H. WALLACE,
Col. 18th S. C. V.

Captain EVANS.

IV.

NEAR WINCHESTER, VA., *Oct. 20th*, 1862.

General N. G. EVANS,
Com'd'g Brigade:

[Extract.]

* * * * * * *

Early on the 29th we formed line of battle at Gainesville, but afterwards moved up

the pike. We then returned to Gainesville, but finally moved up the pike and formed on the left near Groveton. About sunset we were ordered to charge the enemy; during the charge we were fired into by Hood's and Pickett's brigade. We then crossed over to the right of the road, and night coming on put an end to the advance. Between 8 and 9 p. m. we were charged by a body of cavalry, who were, however, repulsed with no loss to ourselves, the loss during the day being 4 wounded.

At night we fell back some distance.

* * * * * * *

Respectfully,

N. V. BANCROFT,
Capt. Comd'g 23d S. C. Vols.

V.

HEADQUARTERS 1ST TX. REG'T, *Sep.* 9, 1862.

The following report of the participation of the First Texas Reg't in the engagement of August 29, 1862, is respectfully submitted:

Having lain in line of battle near the enemy during most of the day of Friday, 29th of Aug., the regiment, after sunset, was ordered forward to the attack. Having advanced some two hundred and fifty yards to an open field, the enemy opened upon us with grape and canister. Advancing steadily, the regiment approached a wood in or near which the enemy's battery was stationed, and when within one hundred or one hundred and fifty yards the artillery firing ceased. After having advanced a short distance into the abovementioned timber, and when some two companies of the left wing, having passed through the point of timber, emerged into the open field beyond, the reg't became engaged with the Seventy-ninth New York Reg't (as stated by prisoners), and after one volley fired by this reg't and some little desultory firing the cry of friends was raised.

During the confusion consequent upon this false cry, the reg't with which we were 1863 engaged took occasion to make its escape in a disorganized state. It was by this time too dark to distinguish friend from foe at a distance of twenty paces. Here we had four killed and fifteen wounded, a list of whom, giving name, rank, and where wounded, character of wound, accompanies this report, marked A. Some 30 or 40 paces to our front the ground was thickly strewn with the dead and wounded of the enemy.

From this point this reg't continued to advance to the front, and soon met with the 18th Ga. and 4th Texas Regt's of this brigade. The brigade, having been collected, moved still to the front, crossing a small stream by the flank upon a ridge, beyond which this regiment rested for the night, in its position in the brigade, within some 150 or 200 yards of the enemy.

As an incident of the battle, I would mention that while I was seeking the position assigned me for the night, marching by the left flank, to wit, with my left resting upon the turnpike road, the 2d Miss. Reg't, Col. Stone, com'd'g, which was moving in the same direction (having recrossed the creek), but in advance and to the left, became entangled with the 33d New York Reg't, when Col. Stone sent me a message requesting me to move up to his relief, which I did. Upon consultation we again recrossed the creek, where my reg't rested for the night, and whence Col. Stone moved to rejoin the 3d brigade. I would mention, also, that the 4th Texas and 18th Ga., who were informed of my moving to the relief of Col. Stone, pressed closely on after me to offer any assistance that might be required.

The reg't kept well together, and evincing unusual eagerness to engage the enemy, and advancing with a yell, which was taken up by the other reg'ts of the brigade and continued until the very woods resounded.

Respectfully submitted.

P. A. WORK,
Lt. Col. Comdg. 1st Tx. Regt.

VI.

HEADQUARTERS 4TH TEXAS REGT., *Sept. 8th*, 1862.

CAPTAIN: I have the honor to report the operations of my regiment in the action of the 29th ult. From the position where the brigade was formed in line of battle and rested during the afternoon we were ordered to advance on the enemy about dusk. With the 1st Texas as directing battalion on my left and the 18th Ga. on my right, I advanced through the timber we were lying in, then through an open field in front, thence into a second wood, where a sharp fire of musketry was going on in our front between our skirmishers and the enemy. Cautioning the men not to fire without orders, I advanced to within fifty yards, when we were fired on by the enemy. Replying with a volley, the enemy were silenced. It was now entirely dark, and it was almost

impossible to ascertain the position of our forces or that of the enemy. Advancing continuously across the second field, I crossed the small creek at the bottom of the hill, and advancing up the second hill, with your assistance we formed in our original brigade order of battle, the 2d Miss. being on our left. Here, throwing out pickets to the front and on the flanks, we lay quietly until about 2 o'clock a. m., on the 30th, when we withdrew to our original position. I regarded our situation during the night as extremely critical; we had penetrated the enemy's lines; he was lying in unknown force very near us, and our scouts reported a battery in position within 300 yards of us; one of my pickets was shot during the night within 100 yards of the regiment.

The officers and men all behaved admirably while under fire and amid the confusion resulting from a night attack. I append a list of casualties, marked "A," which fortunately was small.

Very respectfully,

B. F. CARTER,
Lt. Col. Comdg.

PETITIONER'S OPENING STATEMENT.

The petitioner, on the 25th June, 1878, submitted to the board an opening statement "For the Record" and a copy to each member.

His counsel (Mr. Maltby) used it to a considerable extent in his opening argument (Exhibit B) printed in this Record as a frontispiece.

As the "Opening Statement" is a book of upwards of one hundred and five pages, it is not reprinted herewith, but as reference is frequently made by the counsel for the government in his closing argument to the *paging* of the petitioner's "opening statement," some of the citations will be found on other pages in the opening argument of petitioner's counsel (Exhibit B).

1864 These, for convenience of reference, are noted, as follows: *

Citations.

Petitioner's opening statement.	Counsel's opening argument.
Page 6 will be found on	p. V.
Page 17 will be found on	p. XII.
Page 18 (dispatch No. 20) found on	p. XIII.
Page 26 will be found on	p. XIX.
Page 29 will be found on	pp. XXI, XXVII.
Page 31 will be found on	p. XXII.
Page 57 will be found on	p. XXVII.
Page 65 will be found on	p. LII.
Page 72 will be found on	p. LVI.
Page 84 (dispatch No. 5) found on	p. VI.
Page 85 (dispatch No. 10) found on	p. VIII.
Pape 87 (dispatch No. 16) found on	p. X.
Page 88 will be found on	p. XI.
Page 89 will be found on	p. XIII.
Page 91 (dispatch No. 21) found on	p. XV.
Page 92 (dispatch No. 24) found on	p. LIX.
Page 93 will be found on	p. XVIII.
Page 94 (dispatch No. 27) found on	p. XXV as dispatch No. 28.
Page 95 (dispatch No. 31) found on	p. XXVI.
Page 96 (dispatches Nos. 37, 38) Board's Record	pp. 424, 425.

Official copy:

ASA BIRD GARDNER,
Judge Advocate, U. S. A., Recorder.

WAR DEPARTMENT, *June* 2, 1879.

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*The paging mentioned has reference to pages cut in the margin in this edition.

INDEX.

NOTE.—The paging in the following index has reference to the folios cut in in the margin in this edition.

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Bosbyshell, O. C	871	872			
Bouton, H	330				333
Brahm, C. E	935	936			
Brooks, E. P	1022	1023			
Brown, J. C	872	874			
Buchanan, J. S	602	604			
Buchanan, R. C	214	218			
Bullard, W	730	732			
Bunnell, M. J	677	679			
Butterfield, B. F	938				
Butterfield, D	461	463			
Byles, E. R	721	721			
Campbell, W. M	594	595			
Carr, J. B	836	837			
Carrico, L. B	982	983			
Clary, J. P	672	673			
Conway, W	847				
Cope, E. B	918	920			
Coppinger, J. J	948	949			
Davis, W. S	389	395			
Dawes, R. R	834				
Deems, J. M	839				
Dobson, G. H	1134	1137			
Doubleday, A	688				
Douglass, H. K	702	705	707	708	
Duffee, C	1193	1193			
	635	617			
	615				
Duvall, J. H	860	862			
Dwight, C	722	724			723
Dyer, Archelaus	1177	1183	1191		
Earle, F. S	408	413			
Early, Jubal A	848	853			
Faxon, W. L	889	892			899
Fowler, E. D	547	550			
Fox, G. B	732	734	741		741
Froebel, B. W	708				711
Geck, H	667	669			
Gibbon, J	240	248	255	255	259
Gordon, G. H	1208	1210			

1866	Direct examination.	Cross examination.	Redirect examination.	Recross examination.	Board examination.
Graham, W. M	966	967			
Green, O. D	1098	1099			
Hadden, J	874	875			876
Hatch, J. S	600	602			
Heintzelman, S. P	610	612			
Hereford, W. P	1198	1199			
Hill, S. G	591	592			
Hoffman, J	914				
Hooker, J	946	947			
Hollingshead, J. S	932				
Hope, W. H	930				
Hyland, G., jr	114	116			118
Judson, J. A	102	109	113 111		110 112
Johnston, C. A	83	86			
Jones, F. B	560	562	599	600	
Jones, O	926	928			930
Lakeman, M. B	934	935			
Landstreet, J	1067	1070			
Leachman, J. T	119	137	144		143
Liepold, R. H. G	55	57			
Lincoln, R. T	901 1202	903 1205			905
Locke, F. T	1040 295 450	1042 304 451	453		1044
Longstreet, J	57	66	73		72
Lord, W. B	968	969			
McCoy, T. F	640	642			
McDowell, I	742	748			
McKeever, C	145	150	155		152
McEldowney, R	950				953
McLean, N. C	936	938			938
McNitt, R. J	912	913			
Macy, William W	583	584			
Marshall, C	995 157	999 163	169	172	998, 1003 170
Marshall, E. G	74	80			
Marston, G	858				
Martin, A. P	1127	1128			
Mendill, G. W	845	846			
Mitchell, J	385	387			
Moale, E	555	557			
Mohle, F	674	677			
Monroe, W. T	986	988	990	991	991
Monteith, G	307	315			
Morell, G. W	968 419	430			439
Mosby, J. S	887	888			888
Mott, G	867				
Murray, William E	587	589			
Newell, W. A	291	294			
Ormsby, W. L	650	652			657
Patrick, M. R	181	194			200
Payne, A. D	373	379			384
Piatt, A. S	1045	1047			
Piatt, J. H	1142	1143			

1867

	Direct. examination.	Cross examination.	Redirect examination.	Recross examination.	Board examination.
Poe, O. M	579	581			
Pope, D	552 563 565 578	555 562 567 587	637	638	639
Ramsay, W. H	914				
Randall, G. A	725	725	729		729
Randol, A. M	89	96			
Ready, W	916	917			
Richardson, W. P. (deposition)	1151				
Roath, E. D	717	718			
Robbins, J. S	844				
Robertson, B. H	173	179	181		180 181
Robinson, J. C	833	834			
Rosser, T. L	1152	1156			
Ruggles, G. D	271	285			289
Schenck, R. C	1081	1085			
Schriver, E	832				
Shorkly, G	689	690			
Sickles, H. G	1096	1097			
Sigel, F	940	942			942
Slater, J. G	324	326			
Smith, T. C. H	334	343	365	368	
Smith, W. F	1006	1006			1007
Stevens, H	319	322			323
Stine, J. H	597	598			
Stringfellow, F	1032				
Sturgis, S. D	711	712	714		716
Sullivan, T	97	101			
Sykes, G	440	443			
Taylor, J. P	904	906			
Thomas, S	840	842	844		
Thompson, R	236	239	239		
Tiffany, A. F	877	878			
Tower, Z. B	445	447			
Tremaine, H. E	868	869			
Warren, G. K	15 259, 269 270, 271	32 266, 270	48, 50	49, 50	43, 53
Webb, A. S	1038	1039			
Weld, S. M	1035	1036			1038
Wheeler, W. B	980				
White, B. S	1052	1055			
Wilcox, C. M	228	234			
Williams, C. W.	220	224			225
Wilson, J. H	370	371			

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Confederate Reports 519
Errata in testimony of General Ruggles 1157
Errata in testimony of General Smith 1159
Documentary evidence introduced by Recorder (with exhibits) 1160
Return of General Banks' corps ..... opposite 1165
Documentary evidence introduced by petitioner (with exhibits) 1215
Argument by Mr. Maltby 1241

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Argument by Mr. Bullitt 1369
Argument by Recorder 1439
Argument by Mr. Choate 1679
Additional argument by Mr. Bullitt 1791
Report of the Board 1801
1868 Additional documentary evidence found in attached exhibits, viz:
Extracts from Major-General McDowell's report to General Pope 1827
Extracts from Major-General McDowell's address to his court of inquiry 1834
Extracts from Major General Pope's report to Adjutant-General 1848
Extracts from Major-General Pope's report to Committee on Conduct of the War. 1855
(A portion of this found on p. 1455, and not reprinted.)
Extracts from Confederate reports relative to operations of August 29 and 30, 1862. 1861

O

ORIGINAL

LOANED PETITIONER IN 1862, A[illegible]863, WITH THE MARKS MADE THEREON BY
MARTIAL TRIAL IN 1862 AND [illegible]RIAL. (THIS COPY IS ONLY OF THAT PORTION
SEVERAL WITNESSES ON THAT [illegible]PRISED WITHIN THE INDICATED LINES)
OF THE LARGER MAP COM[illegible] 1 INCH TO 1 MILE
SCAL[illegible]

COPY
of the
McDOWELL MAP
ND USED IN EVIDENCE ON THE GENERAL COURT

REFERENCES

M(2), JACKSON'S LINE
R, REYNOLDS' LEFT AS LAID DOWN BY HIM
M(3), MORELL'S POSITION " " " " "
P, PORTER'S HD. QRS. " " " " CAPT. POPE
M(3), ENEMY'S POSITION " " " " MORELL
in red.



Longstreet & William's Map.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
of
Battle-Grounds of August 28th, 29th, & 30th 1862
in the vicinity of
Groveton, Prince William Co., Va.

Made by the authority of
The Hon. G.W. McCrary, Secretary of War.

Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J.A. Judson, C.E. (A.A.Gen. "King's Division")
and
H.D. Gurden, C.E. (late Capt. A.A.Gen. Confed. Army)

Scale.
miles
feet.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Charles Marshall Map
Oct 16. 1878

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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and
H.D. Garden, C.E., (late Capt. & A.A.Gen. Confed. Army)

Scale 8 inches to 1 Mile

miles
feet

Note - There will be a descriptive memoir
to accompany this map

The contours of this Map correctly represent the directions of the ridges and valleys and their approximate relative elevation. The datum plane is arbitrary. Levels were run upon the Warrenton Pike, the Sudley and Manassas road, and the Manassas and Gainesville road as far north as 1100 feet beyond Dawkins Branch; also between the Warrenton Pike and the independent line of Manassas Gap Railroad. The heights of the principal eminences are estimated and may be in error from 5 to 20 feet.

Engineer Office U.S. Army, Newport R.I. August 27th 1878
[illegible]
Major of Engrs & Bvt. Maj. Gen. U.S.A.

Sudley Ford
Sudley Church
Sudley Spring
Cub Run
Cub Run Turnpike & Sudley Road
RIDGE or SUDLEY MOUNTAIN
BULL RUN
CENTREVILLE
Matthews
Stone House
Robinson
Van Pelt
Stone Bridge
Young's Br.
Lewis Ford
Ball's Ford
Henry
Hill
Dogan
Poe
Chinn
Conrad
Wheeler
Gaskin
Washington
Road
NEW MARKET
Smith
Halkirk Branch
Flat Run
Gibson Road
Blackburn's Ford
Manassas Gap R.R.
FIVE FORKS
Steers
Mt Pony
Howison
Penn
Wm. Lewis
Jas. Dogan
Merchant
Sudley Rd.
Deaton
Spring
Birkett
Gainesville
Mitchell
Road (Abandoned)
Bethlehem Church
Jeffers
Gaskin
Rocky Run
MASS OF WOODS
DAWKINS BRANCH
BROAD RUN
Saw Mill
Smith
Longley's Mill
MANASSAS STATION
Orange & Alexandria Railroad
Chas. Randall
Hampton Cole
Alexandria
Warrenton Pike
Sudley Road
Gainesville
Manassas
Centreville
Warrenton
F
C
D
L

Capt. Douglas Pope Map.
Bvt Brig. Gent C.B Barnes „
Major Fox „
Citizen Monroe „

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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and
H.D. Worden, C.E. (late Capt. & A.A.Gen. Confed. Army)

Scale.

miles
feet.

NOTE - There will be a descriptive memoir and a sheet exhibiting hill topography to accompany this map.

3
C. B.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Charles Duffy Map.
Oct 4, 1878
and E. P. Brooks Map

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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of

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and
H.D. Gurden, C.E., (late Capt. & A.A.Gen. Confed. Army)

Scale 1 inch = 1 mile

miles
feet

NOTE - There will be a descriptive memoir and a sheet exhibiting hill topography to accompany this map.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Charles Duffy Map
Oct 4, 1878
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Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
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and
H.D. Garden, C.E., late Capt. & A.Gen. Confed. Army

Scale 3 inches to 1 Mile.

NOTE There will be a descriptive memoir and a [illegible] exhibiting hill topography to accompany this map.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

H. Kyd. Douglas Map.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
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and
[illegible]

Scale
3 miles
feet.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Major B.S. White Map.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys.
Brig. Gen. & Chief of Engineers.

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assisted by
Capt. J.A. Judson, C.E., (A.A.Gen. "King's Division")
A.D. Gillespie, 1st Lt. C.E., Aide-de-Camp [illegible] Army.

Scale

The contours of this Map correctly represent the directions of the ridges and valleys and their approximate relative elevation.
Levels were run upon the Warrenton Pike, the Sudley and Manassas road, and the Manassas and Gainesville road as far north as 1100 feet beyond Dawkins Branch also between the Warrenton Pike and the independent line of Manassas Gap Railroad [illegible] and may be in error from 5 to 2

Engineer Office U.S. Army, Newport R.I. August 27th 1879
Maj. C.E. & Bvt. Maj. Gen. U.S.A.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Sudley Ford
Cat Harpin Run.
Sudley Spring
Sudley Church
BULL RUN
Sudley & Groveton Road
Matthews
Stone Bridge
Van Pelt
Young
Br.
Zeaus Ford
Ball's Ford
Henry
Hadkins Branch
Groveton
Dogan
Dawkins Branch
Gainesville & Centreville Road
Warrenton Pike
Robinson's
Stone House
Buck Hill
Schoolhouse
Deserted House
Manassas Gap Railroad
Gainesville
Wheeler
Conrad
Smith
NEW MARKET
Road
Alexandria
Hampton Bar Bridge
Carraro
Chas. Randall
Thos. Chapman
Jas. Manassas
Capt. Hartford
FIVE FORKS
Steers
Mt. Pone
B.F. Lewis
K.M. Lewis
Howard
Penn
Wm. Lewis
Jas. Doyle
Dean's
Birkett
Gainesville
Mitchell
Road
Merchant
Manassas
Road
BETHLEHEM CHURCH
Jeffers
Gaskin
DAWKINS BRANCH
RIDGE
MASS OF WOODS
Saw Mill
BROAD RUN
Longleys Mill
Carmel Br.
MANASSAS STATION
Orange & Alexandria Railroad
Centreville
Flat Run
Plantation Road
Plantation's Point
Gainesville

Chaplain J Landstreet Map.

NOTE: *The line A+++++A was made by Petitioner's Counsel and not by the Revd Mr Lanstreet who did not accept them as correct*

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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and
H.D. Gurden, C.E., (late Capt. C.S. Gen. Confed. Army)

Scale.

miles
feet.

LANDSTREET GO to Jackson's right

Sudley Ford
Cat Haipin Run.
Sudley Spring
Sudley Church
BULL RUN
CENTREVILLE
Sudley Road
Matthews
Stone Bridge
Young's Ford
Van Pelt
Buck Hill
Stone House
Robinson's
PIKE.
Lewis Ford
Ball's Ford
Dogan
Dogan's BRANCH
CENTREVILLE
Mrs. Dogan
Brawner
Henry
Chapin
Conrad
Wheeler
Gaskin's Washington Road
NEW MARKET
Smith
Hulkeard Branch
Young's BRANCH
WARRENTON
HAYESVILLE GROVETON
GAINESVILLE
Old Warrenton
Alexandria
Rev. J. Compton
Hampden Cole
Carraro
Chas. Randall
Thos. Healon
Jas. Hickerson
FIVE FORKS
Steers
Mt. Pone
B.F. Lewis
F.M. Lewis
Manassas
Cannon mine Branch
Flat Run
Run
Wm. Lewis
Jas. Dogan
Merchant
New Road
Mass of Woods
Dawkin's BRANCH
Gainesville
Mitchell Road
Saw Mill
BROAD RUN
Langleys Mill
BETHLEHEM CHURCH
Jeffers
Gaskin
MANASSAS STATION
Orange & Alexandria Railroad.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Chaplain J. Landstreet Map.

NOTE: The line A+++++A was made by Petitioner's Counsel and not by the Revd Mr. Lanstreet who did not accept them as correct.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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Scale. 2 miles / 2 feet.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

John H. Piatt Map
No. 231878

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
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Scale 3 inches to 1 Mile

miles

feet.

NOTE - There will be a descriptive memoir and a sheet exhibiting hill topography, to accompany this map.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Gen.l Thos. L. Rosser.
Comd'g 5th Va. Cavalry
Maj. Gen.l J.E.B. Stuart's Division.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
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Scale.

miles
feet.

NOTE. There will be a descriptive memoir and a sheet exhibiting hill topography to accompany this map.

Official Copy
G.K. Warren
Maj. Engr. & Bvt. Maj. Gen. U.S.A.

Dyer Map. Jan. 2nd 1879

Note. P. Genl. Pope's Head Qrs
O Petitioner's do

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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Scale.

miles.
feet.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Illustrative Map

Accompanying Argument of Petitioner's Counsel

Positions of troops delineated by his Counsel.

No. 2.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

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H.D. Garden, C.E., (late Capt. A.A. Gen. Confed. Army.)

Scale. miles feet.

Notes by Counsel.

Blue — Gen. Popes Army
R " Reynolds' " } As represented to the Court.
M(?) " Porter's "

Red — " Jackson's " " "

Gen. Pope erroneously assigned Porter to this position on his map accompanying his Report to the Committee on the Conduct of the War.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

Illustrative Map

Accompanying Argument of Petitioner's Counsel.
Positions of troops delineated by his Counsel.

No. 3.

Engineer Department, U.S. Army.
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and
[redacted]

Scale.

½ ¼ ¾ 1 2 miles
1000 2000 3000 4000 5000 6000 7000 8000 9000 feet.

Note - There will be a descriptive memoir and a sheet exhibiting hill topography, to accompany this map.

The positions & movements of Poe's Brigade as indicated in purple and in blue in this Map, on the 3d October 1878 are substantially Correct. O.M. Poe

Stuley Ford
Stuley Spring
Cat Hairpin Run.
Stuley Church
BULL RUN
Groveton & Stuley Road
STONY RIDGE or Sudley Mountain
Pittsylvania House
Matheus
Stone Bridge
Van Pelt
Robinson
Young's Branch
Dogan
Dogan's Branch
Centreville
Henry
Chinn
Conrad
Wheeler
Brill
Gaskin's Washington Road
NEW MARKET
Smith
Old Warrenton & Alexandria R.
Hampden Cole
Curraco
Chas. Randolph
Manassas Gap Railroad
Jas. Mckerson
FIVE FORKS
Steers
Mt. Pone
B. Elgin's
F.M. Lewis
Houson Penn
Wm. Lewis
Jas. Doyle
Merchant
Deats
Birkett
DAWKIN'S BRANCH
MASS OF WOODS
Mitchell Road.
BETHLEHEM CHURCH
Jeffers
Gaskin
Smith
Saw Mill
BROAD RUN
Langley's Mill
Manassas Gap Railroad
MANASSAS STATION
Alexandria Railroad
Leurs Ford
Bard's Ford
Halkuss Branch
New Road
Flat Run
Blackburn's Ford
Centreville
Warrenton
Gainesville

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.


Illustrative Map
Accompanying Argument of Petitioner's Counsel.
Positions of troops delineated by his Counsel.
No. 4.
12 M. Aug. 29th '62.
Engineer Department, U.S. Army.
Bvt. Maj. Gen. A. A. Humphreys,
Brig. Gen. & Chief of Engineers.
MAP
of
Battle-Grounds of August 28th, 29th, & 30th 1862
in the vicinity of
Groveton, Prince William Co., Va.
Made by the authority of
The Hon. G. W. McCrary, Secretary of War.
Surveyed in June 1878 by
Bvt. Maj. Gen. G. K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J. A. Judson, C.E., (a.d.c. Gen. "Kings Division")
and
H. D. Garden, C.E., (late Capt. & A.A.Gen. Confed. Army)
Scale 3 inches to 1 Mile
miles
feet.
The Contours of this Map correctly represent the directions of the ridges and valleys and their approximate relative elevation. The datum plane is arbitrary. Levels were run upon the Warrenton Pike, the Sudley and Manassas road, and the Manassas and Gainesville road as far north as 1100 feet beyond Dawkins Branch; also between the Warrenton Pike and the independent line of Manassas Gap Railroad. The heights of the principal eminences are estimated and may be in error from 5 to 20 feet.
Engineer Office U.S. Army, Newport R.I. August 27th 1878.
G. K. Warren
Major of Eng'rs & Bvt. Maj. Gen. U.S.A.
The Federal troops are shown in Blue, the confederate troops in red.
Positions of troops on this Map were given in testimony before the Army Board or laid down on Maps by the following Officers present on the field.
FEDERAL ARMY.
Maj. Gen. G. W. Morell
F. Siegel
Brig. Geo. Sykes
John Gibbon
M. R. Patrick
Z. B. Tower
D. Butterfield
Col. G. K. Warren
E. G. Marshall
G. D. Ruggles
T. Sullivan
Col. O. M. Poe
Capt. A. M. Randol
H. I. Cranford
Wm. M. Graham
H. Stevens
G. W. Mindel
E. B. Cope
S. N. Benjamin
CONFEDERATE ARMY.
Gen. R. E. Lee
James Longstreet
Jubal A. Early
Cadmus M. Wilcox
Beverly Robertson
J. B. Hood
Col. Charles Marshall
Maj. Charles Williams
Cap't A. D. Payne
James Mitchel
W. M. Owens
Position Gen. Pope supposed Gen. Porter occupied as given on Gen. Pope's Map accompanying official report.
GEN. PORTER'S 5th ARMY CORPS
KINGS DIVISION of McDOWELL'S CORPS
at 12 M. Aug 29th 1862.
Gen. McDowell Commanding
KING'S DIVISION McDOWELL'S CORPS
SYKES' DIVISION
MOREL'S DIVISION
LONGSTREET
JACKSON
ROBERTSON'S CAVALRY 12 M.
WASHINGTON ARTILLERY
GAINESVILLE
CENTREVILLE
MANASSAS STATION
BULL RUN
BROAD RUN
DAWKIN'S BRANCH
Gen'ls McDowell & Porter 9 A.M.
WIER



Illustrative Map.

Accompanying Argument of Petitioner's Counsel.

Positions of troops delineated by his Counsel.

No. 5.

6, P.M. Aug. 29th '62.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
of

Battle-Grounds of August 28th, 29th, & 30th, 1862

in the vicinity of

Groveton, Prince William Co., Va.

Made by the authority of
The Hon. G.W. McCrary, Secretary of War.

Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J.A. Judson, C.E., (A.A. Gen. "Kings Division")
and
H.D. Garden, C.E., (late Capt. & A.A. Gen. Confed. Army)

Scale, 3 inches to 1 Mile

miles
feet.

The contours of this Map correctly represent the directions of the ridges and valleys and their approximate relative elevation. The datum plane is arbitrary. Levels were run upon the Warrenton Pike, the Sudley and Manassas road, and the Manassas and Gainesville road as far north as 1100 feet beyond Dawkins Branch; also between the Warrenton Pike and the independent line of Manassas Gap Railroad. The hights of the principal eminences are estimated and may be in error from 5 to 20 feet.

Engineer Office U.S. Army, Newport R.I. August 27th 1878.
G.K. Warren
Major of Eng'rs & Bvt. Maj. Gen. U.S.A.

The Federal troops are shown in Blue, the Confederate troops in red.
The symbols used are ▭ = 1st position, ▭ = 2nd position, ▭ = 3d position, ▬ final position.

Positions of troops on this Map were given in testimony before the Army Board, or laid down on Maps by the following Officers present on the field.

FEDERAL ARMY		CONFEDERATE ARMY.
Maj. Gen. G.W. Morell	Col. O.M. Poe	Gen. R.E. Lee
" F. Siegel	Capt. A.M. Randol	" James Longstreet.
Brig. " Geo. Sykes	" H.J. Crawford.	" Jubal A. Early.
" " John C. Ihan	" Wm. McG. Graham.	" Cadmus M. Wilcox
" " M.R. Patrick.	" H. Stevens.	" Beverly Robertson
" " Z.B. Tower	" G.W. Mundel.	" J.B. Hood.
" " D. Butterfield	" E.B. Cope.	Col. Charles Marshall
Col. G.K. Warren.	" S.N. Benjamin	Maj. Charles U. Williams
" E.G. Marshall		Cap't A.D. Payne
" G.D. Ruggles		" James Mitchel
" T. Sullivan		" W.M. Owens.

Illustrative Map.

Accompanying Argument of Petitioner's Counsel.
Positions of troops delineated by his Counsel.

No 6

6, P.M. Aug. 29th '62.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
of

Battle-Grounds of August 28th, 29th, & 30th, 1862

in the vicinity of

Groveton, Prince William Co., Va.

Made by the authority of
The Hon. G.W. McCrary, Secretary of War.

Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J.A. Judson, C.E., (A.A. Gen. "Kings Division")
and
H.D. Garden, C.E., (late Capt. & A.A. Gen. Confed. Army.)

Scale 3 inches to 1 Mile

0 1/4 1/2 3/4 1 miles
0 500 1000 2000 3000 4000 5000 6000 7000 8000 9000 feet.

The contours of this Map correctly represent the directions of the ridges and valleys and their approximate relative elevation. The datum plane is arbitrary. Levels were run upon the Warrenton Pike, the Sudley and Manassas road, and the Manassas and Gainesville road as far north as 1100 feet beyond Dawkins Branch; also between the Warrenton Pike and the independent line of Manassas Gap Railroad. The heights of the principal eminences are estimated and may be in error from 5 to 20 feet.

Engineer Office U.S. Army, Newport RI August 25th 1878
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

The Federal troops are shown in Blue, the Confederate troops in red.
The symbols used are ▭ - 1st position, ▨ - 2nd position, ▬ - 3d position, ▬ - final position.

Positions of troops on this Map were given in testimony before the Army Board, or laid down on Maps by the following Officers present on the field.

FEDERAL ARMY.		CONFEDERATE ARMY.
Maj. Gen. G.W. Morell.	Col. O.M. Poe.	Gen. R.E. Lee
" F. Siegel.	Capt. A.M. Randol.	" James Longstreet.
Brig. " Geo. Sykes.	" M.I. Crawford.	" Jubal A. Early.
" " John C. Hoon.	" Wm. M. Graham.	" Cadmus M. Wilcox.
" " A.T.A. Torbert.	" H. Stevens.	" Beverly Robertson.
" " Z.B. Tower.	" G.W. Mundal.	" J.B. Hood.
" " D. Butterfield.	" E.B. Cope.	Col. Charles Marshall.
Col. G.K. Warren.	" S.N. Benjamin.	Maj. Charles U. Williams.
" E.G. Marshall.		Capt. A.D. Payne.
" G.D. Ruggles.		" James Mitchel.
" T. Sullivan.		W.M. Owens.

JACKSON

STONY RIDGE or SUDLEY MOUNTAIN

Groveton & Sudley Road

Sudley Ford

Sudley Church

Sudley Spring

Cat Harpin Run.

BULL RUN

Pope's Brigade in Retreat 6 P.M.

Gen. Pope's Hd Qrs 10 P.M.

Graham's Battery (1)

KEARNY

RICKETTS

RENO (1)

Matheus

Ricketts & Stevens's 6 P.M.

Kearny with Robinson & Birney 10 P.M.

Line of Retreat

Stone Bridge

Van Pelt

Lewis Ford

Bull Run

Bridges Ford

Kings Div. Hatch Comd'g

Porter Hd Qrs in the field

Sykes

Reno 5 P.M.

Reno 29

Hulkeah Branch

Gainesville

Warrenton Pike

Old Warrenton

Alexandria &

Dr. Jones

Conrad

New Market

Five Forks

Chas. Randall

Jas. Anderson

Thos. Salom

Robertson's Cavalry

Mass of Woods

Dawkin's Branch

Mt. Pone

Hows

Pleasants

Wm. Lewis

Jas. Dogan

Barrett

Barns

Sherinesville

Mitchell

Merchant

Smith

Bethlehem Church

Jeffers

Gen. Porter's Hd. Qrs. 6.30 P.M. Aug 29th. 5 A.M. Aug 30.

Gen. Porter's Hd. Qrs. 11 A.M. Aug 30th.

Gen. Porter's Corps

3. A.M. Aug. 30th when orders were received to march to battlefield - Groveton.

Flat Run

Manass. Gap Rail Road

New Road

Broad Run

Saw Mill

Langley's Mill

To Milford 3 miles

Manassas Station

Orange & Alexandria Railroad

Gainesville

Illustrative Map

Accompanying Argument of Petitioner's Counsel

or

BATTLE-FIELD OF MANASSAS, Va.,

giving positions and movements of troops

August 30th, 1862.

Chiefly From surveys made in June, 1878
by authority of
The Hon. Secretary of War
by
Bvt. Maj. Gen. G. K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J. A. Judson, C.E. (A.A. Gen. "King's Division")
and
H.D. Garden, C.E., of Warrenton, Va.

Scale, 1 ½ 0 1 2 3 4 miles.

Positions of troops as understood by the petitioner to have been given in testimony before the Army Board and laid down on maps by witnesses and other officers present on the field.

FEDERAL ARMY.		CONFEDERATE ARMY.
Maj. Gen. G.W. Morell	Col. O.M. Poe	Gen. R.E. Lee
" " F. Sigel.	Capt. A.M. Randol	" James Longstreet
Brig. " Geo. Sykes.	" H.L. Cranford.	" Jubal A. Early
" " John Gibbon.	" Wm. M. Graham.	" Cadmus M. Wilcox.
" " M.R. Patrick.	" J.A. Judson.	" Beverly R. Robertson.
" " Z.B. Tower	" H. Stevens.	" J.B. Hood.
" " D. Butterfield.	" G.W. Mindel.	Col. Charles Marshall.
Col. G.K. Warren.	" E.B. Cope.	Maj. Charles Williams.
" E.G. Marshall.	" S.N. Benjamin.	Capt. A.D. Payne
" Geo. D. Ruggles		" James Mitchel.
" T. Sullivan.		" W.M. Owens.

Notes by Petitioner's Counsel

The Federal troops are shown in blue; the Confederate troops in red. The symbols used are ▭ = 1st position; ▭ = 2d position; ▭ = 3d position; — = final position, with figures, thus, (10¹ 10² 10³) for Federal troops, & with letters and figures, thus (B¹ B² B³) for Confederate troops, the smaller figures denoting the relative order of position.

Federal Army.

P¹ P² Gen. Pope's Hd Qrs. from 1.45 P.M. 29th & at 10 P.M. 30th. P³ P⁴ A P⁵ Gen. Porter's Hd. Qrs. at 3.5 & 8 A.M. & 1 & 5 P.M. Aug. 30th.

A - Porter's Corps at 3 A.M. when orders were received to march to battle-field at Groveton. →·→·→ Porter's route to Pope

- 1¹ 1² Butterfield's — 2 Brigades of Butterfield Com'd. 3. / 2¹ 2² Lansing's — Morell's Divis. — 8. 4 M. & 2 to 4.30 P.M. — Sykes' Division 8. A.M. 3. 4. 4.30 to 7 P.M. — Porter's Corps & Command. — McDowell's Command.
- 3¹ 3² 3³ Buchanan
- 4¹ 4² 4³ Chapman.
- 5¹ 5² 5³ Warren.
- 6¹ Hazlett's Batty.
- 7¹ 7² 7³ Rundel's "
- 8¹ Weed's "
- 9¹ 9² 9³ King's Division, 4 Brigades, Hatch, Com'd.g — McDowell's Corps
- 10¹ 10² 10³ Reynolds " 8 A.M. 12 M. 2 & 5 P.M.
- 12¹ 12² Reno. — 13. Stevens. — 14¹ 14² Graham's Battery — Reno's Corps
- 15. Hooker's Division — Heintzelman's Corps
- 16¹ 16² Kearny's " — Heintzelman's Corps
- 17¹ 17² Sigel's Corps — Sigel's Corps
- 17³ Milroy & McLean — Sigel's Corps
- 18. Bayard's Cavalry

Confederate Army.

- A Starke — B Early — C A.P. Hill — Jackson's Corps
- D¹ D² Hood. — E¹ E² Kemper — F¹ F² D.R. Jones — G¹ G² Wilcox and Pryor & Anderson — Longstreet's Corps.
- H Robertson's Cavalry.
- I Washington Art'y. 4 Batteries.
- J¹ J² 2d & 4th Batteries — J³ J⁴ Washington Art'y.

The red arrows show the route of the Confederate troops, Aug. 30th P.M.



Illustrative Map

Accompanying Argument of Petitioner's Counsel

or

BATTLE-FIELD OF MANASSAS, Va.,

giving positions and movements of troops

August 29th, 1862.

Chiefly From surveys made in June, 1878
by authority of
The Hon. Secretary of War
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Bvt. Maj. Gen. G. K. Warren, Major of Engineers, U.S.A.
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Capt. J. A. Judson, C.E. (A.A. Gen. "King's Division")
and
H.D. Garden, C.E., of Warrenton, Va.

Scale, 1 ½ 0 1 2 3 4 miles.

Positions of troops as understood by the petitioner to have been given in testimony before the Army Board and laid down on maps by witnesses and other officers present on the field.

FEDERAL ARMY.		CONFEDERATE ARMY.
Maj. Gen. G.W. Morell.	Col. O.M. Poe.	Gen. R.E. Lee.
" " F. Sigel.	Capt. A.M. Randol.	" James Longstreet
Brig. " Geo. Sykes.	" H.L. Cranford.	" Jubal A. Early
" " John Gibbon.	" Wm. M. Graham.	" Cadmus M. Wilcox.
" " M.R. Patrick.	" J.A. Judson.	" Beverly R. Robertson.
" " Z.B. Tower.	" H. Stevens.	" J.B. Hood.
" " D. Butterfield.	" G.W. Mindel.	Col. Charles Marshall.
Col. G.K. Warren.	" E.B. Cope.	Maj. Charles Williams.
" E.G. Marshall.	" S.N. Benjamin.	Capt. A.D. Payne.
" Geo. D. Ruggles.		" James Mitchel.
" T. Sullivan.		" W.M. Owens.

Notes by Petitioner's Counsel.

The Federal troops are shown in blue; the Confederate troops in red. The symbols used are ▭ = 1st position; ▭ = 2d position; ▭ = 3d position; — = final position, with figures, thus, (10¹ 10² 10³) for Federal troops, & with letters and figures, thus (B¹ B² B³) for Confederate troops, the smaller figures denoting the relative order of position.

Federal Army.

"P" = Gen. Pope's Hd. Qrs. P.M. — "M P" = Gen's McDowell and Porter 12. M. — "M" = Gen. McDowell's Hd. Qrs. 5.45 P.M. "X" = position Gen. Pope supposed Gen. Porter occupied as given on Gen Pope's map accompanying official report. P' Gen. Porter's Hd Qrs. 3.30 P.M. Aug. 29th to 3. A.M. 30th

- 1. Porter's Skirmishers — 10¹ 10² 10³ Hatch. — 1st position 12. M. — King's Div. — McDowell's Corps
- 2¹ 2² Barnes. — Morell's Div. — 11. 11² 11³ - Doubleday. — → → → route
- 3¹ 3² Butterfield. — 12. 12² 12³ - Patrick. — from 1 to 4.30 P.M.
- 4¹ 4² Griffen. — Porter's Corps 1st position 12. M. 2d " 6 P.M. — 12¹ 12² - Gibbon. — 2d position. 6 P.M.
- 5. 5² Warren. — 13³ — " at night — 3d " 7 P.M.
- 6. 6² Chapman. — Sykes' Div. — Route of Ricketts' Div. from 2 to 6. P.M.
- 7. 7² Waterman's Batt'y.
- 8. 8² Martin's "
- 9. Reno's Corps — 19¹ Schenck, 12. M. — 19² " 6. P.M. — 20. Stahl, 12. M. — 21. Meltroy. — 22¹ Steinwehr 12. M. — 23¹ Schurz 12 " — Sigel's Corps. — At night on line of 19th on Dogan's Hill
- 14. Rickett's at 8 P.M.
- 24¹ Sigel's Reserves 12 "
- 25 Benjamin's Batty. 12. M to 4. P.M.
- 25² " " 4.30. P.M. — Reno's Corps
- 25³ " " 7 " Knight

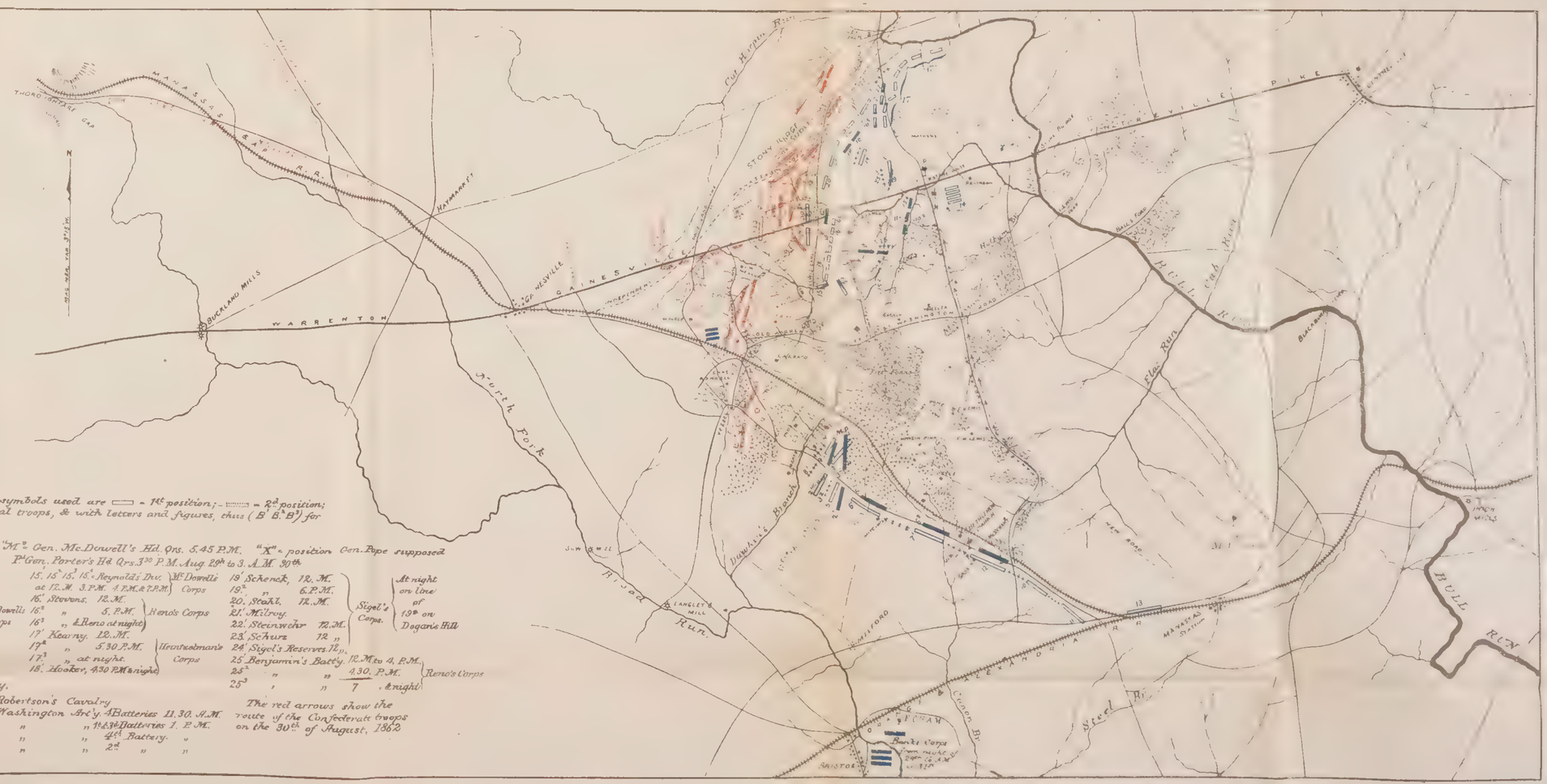
Confederate Army.

L Gen Lees Hd Qrs. 10 A.M.

- A¹ A² A³ Starke — B¹ B² Early to 12 M — B¹ " 3. P.M. — B² " 4 " — C¹ C² C³ A.P. Hill — Jackson's Corps
- D¹ D² Hood at 12. M & 7. P.M. — Longstreet's Corps
- E. E² E³ Kemper.
- F. F² D.R Jone's
- G. H. H² H³ H⁴ Wilcox at 12. M. 2 P.M. - 2 to 6 P.M. & 7.30 P.M.
- I. Robertson's Cavalry
- J. Washington Art'y. 4 Batteries 11.30. A.M.
- J² " " 1st & 3d Batteries 1. P.M.
- K. " " 4th Battery. "
- L. " " 2d " "

B's 9th and 31st Va. Reg. 8 A.M. to 12 M. as skirmishers

The red arrows show the route of the Confederate troops on the 30th of August, 1862



LETTER-PRESS DESCRIPTIVE OF ILLUSTRATIVE MAP No. 1 OF COUNSEL FOR THE GOVERNMENT.

The contours on this map correctly represent the directions and positions of the ridges and valleys and their approximate relative elevations. They may be in error from five to twenty feet. The datum plane is arbitrary. National forces are delineated in blue, and the Confederate forces in red.

[This map has been prepared at request of the Presiden of the Board, *after* argument, to represent the views of the counsel for government, who attempted to locate positions with a pointer on the large official map.—*Vide* argument.]

NATIONAL FORCES, COMMANDED BY MAJOR-GENERAL JOHN POPE, UNITED STATES VOLUNTEERS.

P, Petitioner's corps in retreat.

- M, Morell's division.
  - B, Butterfield's brigade.
  - B^2, Martindale's brigade under Barnes.
  - G, Griffin's brigade.
  - W, Warren's brigade.
- S, Sykes' division
  - B^3, Buchanan's brigade.
  - C, Chapman's brigade.
- Sturgis' division
  - P^1, Piatt's brigade.
  - T, Taylor's squadron of 1st Pa. Cavalry.
- Smead's Battery K, 5th U. S. Artillery. — Attached to Sykes' division.
- Weed's Battery I, 5th U. S. Artillery. — Attached to Sykes' division.
- Davis' Battery E, 1st U. S. Artillery, under Randol. — Attached to Sykes' division.
- Griffin's Battery D, 5th U. S. Artillery, under Hazlett. — Attached to Morell's division.
- Martin's Battery C, 3d Mass. Independent Artillery. — Attached to Morell's division.
- Waterman's Battery C, 1st Rhode Island Artillery. — Attached to Morell's division.
- M P—McDowell and Petitioner at 12 m.

McDowell's Corps.

- R, Ricketts' division
  - D, Duryée's brigade, 1st. — Leppein's Maine Battery.
  - Tower's brigade, 2d. — Hall's Maine Battery (en route from Bristoe to Manassas).
  - H, Hartsuff's brigade, 3d. — Mathew's Pennsylvania Battery F, 1st Penn. Light Artillery.
  - C^1, Carroll's brigade, 4th. — Thompson's Independent Pennsylvania Battery C.
- K, King's division (Hatch commanding).
  - H^1, Hatch's brigade.
  - D^1, Doubleday's brigade. — Gerrish's battery of howitzers.
- K^1, King's division (Hatch commanding), at 12 m.
  - G^1, Gibbon's brigade.
  - P^2, Patrick's brigade.
- Reynolds' division
  - S^1, Seymour's brigade. — R^1, Ransom's Battery C, 5th United States Artillery.
  - J, Jackson's brigade. — A, Battery A, 1st Pennsylvania Light Artillery (Simpson's)
  - M^2, Mead's brigade. — B^1, Battery G, 1st Pennsylvania Light Artillery (Kearn's)
  - C, Battery B, 1st Pennsylvania Light Artillery (*Cooper's*).
- Buford's cavalry
  - 4th N. Y. cavalry.
  - 9th N. Y. cavalry.
  - 6th Ohio cavalry.
  - 1st Conn. cavalry.
  - 1st R. I. cavalry, of Bayard's cavalry.

Sigel's corps

- S^3, Schurz's division
  - Schenck's division (1st).
    - S^8, Schimmelfenning's (1st brigade).
    - K^3, Krzyzanowski's (2d brigade).
    - M^1, McLean's (2d brigade).
    - S^2, Stahl's (1st brigade).
    - S^4, Steinwehr's (1st brigade).
    - M^3, Milroy's Independent brigade.
    - S^5, Sigel's reserve.
    - S^6, Sigel's artillery.
  - Hampton's Ind. Pa. Battery. — These batteries belong to Banks' corps, temporarily attached to Schurz's division.
  - Romer's Battery. — These batteries belong to Banks' corps, temporarily attached to Schurz's division.
  - De Beck's Battery, 1st Ohio Artillery. — These batteries belong to Banks' corps, temporarily attached to Schurz's division.
- B^5, Bayard's cavalry, under Beardsley.
  - 1st Pa. Cavalry, Colonel Jones.
  - 1st N. Y. Cavalry, Colonel Windom.
  - 1st Maine Cavalry, Colonel Allen.

Heintzelman's corps.

- K^2, Kearney's division.
  - P^3, Poe's brigade.
  - B^3, Birney's brigade.
  - R^1, Robinson's brigade.
- H, Hooker's division.
  - G^2, Grover's brigade. — M^1, 1st Mass. Volunteer Infantry.
  - C^1, Carr's brigade.
  - T^1, Taylor's brigade.

Burnside's corps, R^2, Reno's division.

- S^7, Stevens' brigade. — B^4, Battery E, 2d U. S. Artillery. Lt. S. N. Benjamin commanding. with Weidrick's Battery of Sigel's corps and part of Stevens' brigade.
- F^1, Ferrero's brigade.
- N^1, Nichol's brigade.

All the batteries of artillery with the several divisions are not noted and only those which are considered necessary to describe the map.

CONFEDERATE FORCES, COMMANDED BY GENERAL R. E. LEE.

L, Longstreet's force.

- W, Wilcox's division
  - Wilcox's brigade.
  - Featherstone's brigade.
  - Pryor's brigade.
- H, Hood's division
  - T, Texas brigade.
  - L^1, Law's brigade.
  - E^1, Evans' brigade.
- K, Kemper's division
  - Kemper's brigade, under Colonel Corse.
  - Pickett's brigade, under Colonel Hunton.
  - Jenkins' brigade.
- J, Jones' division
  - G. T. Anderson's brigade.
  - Drayton's brigade.
  - Toombs' brigade.

J. Jackson's force.

- H, A. P. Hill's division
  - Gregg's brigade.
  - Branch's brigade.
  - Pender's brigade.
  - Archer's brigade.
  - Thomas' brigade.
  - Field's brigade.
- E, Ewell's division, under Lawton
  - Early's brigade.
  - Lawton's brigade.
  - Hay's brigade.
- J^1, Jackson's division, under Starke.
  - Trimball's brigade.
  - Jackson's brigade.
  - Starke's brigade.

Stuart's division

- R^1, Rosser's Cavalry, videttes.
- R, Robertson's Cavalry, videttes.
- L, Fitz Hugh Lee's Cavalry.
- P^1, Patrick's squadron of cavalry. [to Stuart.]
- B^1, Bachman's battery of artillery (of Hood's division ordered to report
- P, Pelham's battery of artillery.

- S^1, Five batteries in reserve under Major Shumaker.
- B, Batteries of Braxton, Pegram, and Crenshaw.

- W^2, Squires' and Miller's Batteries Washington Artillery, at 1 o'clock, p. m.
- W^1, Squires' and Miller's Batteries, with others from Jackson's command, in all 26 guns, at 2 o'clock p. m.

Portion of the Confederate army of Northern Virginia which did not arrive on the field until after the battle of the 29th of August, 1862.

Colonel Stephen D. Lee's reserve artillery, stationed at Thoroughfare Gap on the 29th. Arrived on the field at 3 a. m. August 30.
Major-General R. H. Anderson's division (four brigades) on the march to join. Arrived on the field at 3 a. m. August 30.
Major-General D. H. Hill's division (five brigades with artillery) on the march to join. Arrived on the field in the afternoon of the 30th.
Major-General L. McLaw's division (four brigades) on the march to join. Arrived on the field in the afternoon of the 30th.

Note by counsel for the government.—While the enemy's forces are given a position in line of battle west of Pageland lane, at 2 p. m., it is considered very doubtful if they had advanced from a point just east of Gainesville, *in force*, to the indicated position, so as to form *complete* line and extend below the pike, as early as this time. When Jacksons' right was threatened and attacked by Reynolds' division of Pennsylvania Reserves attached to McDowell's corps, and Schenck's division of Sigel's corps, the Confederate force under Longstreet had, in order to relieve Jackson's right, to move up to near Pageland lane from the "defensive" position taken at Gainesville (part of Hood's division in advance). That "defensive" position, it is believed, was taken because the enemy did not then know but that Sumner's and Franklin's corps, of the Army of the Potomac, would come up from the Rappahannock, via Warrenton, on the Warrenton, Gainesville, and Groveton pike, instead of landing at Alexandria, and thus strike in the rear of so much of Lee's army as was on the field, and in conjunction with the national forces on the ground overwhelm it before the third of his army then absent could arrive. Jackson's cavalry, under Stuart, were down in the indicated direction in order to watch the Manassas and Gainesville road and were subsequently moved further down to watch the road from Bristoe from whence General Banks' corps could have advanced and interposed at Gainesville between the portion of Lee's army under Major-General Longstreet, and his reinforcements then on the march via Thoroughfare Gap.—*Vide* Argument, Board's Record, p. 1439.

AUTHORITIES FOUND IN THE GENERAL COURT-MARTIAL AND ARMY BOARD'S RECORDS, USED IN PREPARATION OF THE TWO ILLUSTRATIVE MAPS OF GOVERNMENT COUNSEL.

National officers.

Major-General John Pope.
Major-General Irwin McDowell.
Major-General S. P. Heintzelman.
Major-General Abner Doubleday.
Major-General S. D. Sturgis.
Major General Franz Sigel.*
Major General Z. B. Tower.
Major-General R. C. Schenck.*
Brevet Major-General H. G. Sickles.*
Brevet Major General N. C. McLean
Brigadier General John F. Reynolds.*
Brigadier General John Buford
Brigadier General Charles Grohn
Brigadier General M. R. Patrick
Brigadier-General A. S. Piatt.
Brigadier-General Thomas C. H. Smith.*
Brevet Brigadier-General R. R. Dawes.
Brevet Brigadier-General J. M. Deems.
Brevet Brigadier-General E. D. Fowler.
Brevet Brigadier-General Charles Barnes.*
Brevet Brigadier-General J. P. Taylor.
Brevet Brigadier-General T. F. McCoy.
Brevet Brigadier-General W. P. Richardson.*
Colonel B. F. Smith.
Colonel E. G. Marshall.
Major G. B. Fox.*
Major S. N. Benjamin.
Major W. H. Hope.*
Major George Hyland, jr.
Captain J. J. Coppinger.
Captain Henry Geck.
Captain E. P. Brooks.
Captain R. J. McNitt.
Captain Douglas Pope.
Lieutenant J. S. Hollingshead.*
Lieutenant B. T. Bowers.
Private William Ready, 1st Pa. Cavalry.
Private Charles Duffee, 1st Ohio Cavalry.
Private Archelaus Dyer, 1st Ohio Cavalry.
Private William Bayard, 1st Pa. Cavalry.
Private John Hoffman, 1st Pa. Cavalry.
Private William H. Ramsey, 1st Pa. Cavalry.

Confederate officers.

Major-General C. M. Wilcox.
Brigadier-General T. L. Rosser.
Major B. S. White.
Major Henry Kyd Douglas.
Captain R. McEldowney.
Captain James Mitchell.
Reverend John Landstreet.
Citizen W. B. Monroe.
Citizen L. B. Carrico.
Citizen W. B. Wheeler.

Official reports of Generals S. P. Heintzelman, J. F. Reynolds*, J. C. Robinson, C. Grover, Philip Kearney, Franz Sigel, R. H. Milroy, J. Stahel, N. C. McLean, Carl Schurz, R. C. Schenck (by Col. William H. Cheeseborough*), Colonels J. B. Carr, W. Krzyzanowski, Captains Wiedrick and Dilger.

Confederate official reports of Generals R. E. Lee, James Longstreet, T. J. Jackson, J. B. Hood, A. P. Hill, J. E. B. Stuart, and subordinate reports.

* These witnesses more particularly as to position of Reynolds' and Schenck's divisions.

LETTER-

The contours on this map correctly represent the di

[This map has been prepared at request of the Presiden

P, Petitioner's corps in retreat.

- M, Morell's division.
  - B, Butterfiel
  - B^2, Martinda
  - G, Griffin's b
- S, Sykes' division ..
  - W, Warren's
  - B^3, Buchanan
  - C, Chapman'
- Sturgis' division ...
  - P^1, Piatt's bri
  - T, Taylor's s
- Smead's Battery K, 5th U. S. Artiller
- Weed's Battery I, 5th U. S. Artillery.
- Davis' Battery E, 1st U. S. Artillery,
- Griffin's Battery D, 5th U. S. Artillery,
- Martin's Battery C, 3d Mass. Indepen
- Waterman's Battery C, 1st Rhode Isl
- M P—McDowell and Petitioner at 12

Sigel's corps .....

- S^3, Schurz's division..
  - S^8, Schimme
  - K^3, Krzyzan
- Schenck's division (1st).
  - M^1, McLean'
  - S^2, Stahl's (
- S^4, Steinwe
- M^3, Milroy's
- S^5, Sigel's r
- S^6, Sigel's a
- P^5, Bayard's cavalry
  - 1st Pa. Cav

No 1

ILLUSTRATIVE MAP of Battle-Grounds of August 28th, 29th, & 30th 1862

in the vicinity of

Groveton, Prince William Co., Va.

of Counsel for the Government.

Chiefly from the Survey made under the authority of

The Hon. GW. McCrary, Secretary of War.

Showing the relative positions of the Confederate and United States armies in the battle of the 29th of August 1862, at 2 P.M. as given in the evidence of witnesses on the trial, in 1862, before the Army Board, in the official reports, and laid down on the map by the counsel.

(See accompanying Letter Press.)

Scale



W. BOZLI PHOTO-LIH. PHILA.


No. 2.
ILLUSTRATIVE
MAP
OF THE
BATTLE-FIELD OF MANASSAS, VA.
SHOWING POSITIONS AND MOVEMENTS OF TROOPS
August 29th 1862.
TO ACCOMPANY CLOSING ARGUMENT
OF
COUNSEL FOR THE GOVERNMENT
POSITIONS LAID DOWN BY HIM
TIME OF DAY 6 P.M.
SCALE
H. L. RIPLEY DEL.
W. BOSELL PHOTO-LITH PHILA
JACKSON'S COMMAND
LONGSTREET'S COMMAND
WILCOX DIV
HOOD'S DIV
WARRENTON
GAINESVILLE
CENTREVILLE
PIKE
BULL RUN
MANASSAS JUNCTION
MANASSAS STATION
ALEXANDRIA
ORANGE
BRISTOE STATION
SUDLEY SPRING
MATHEWS
VAN PELT
ROBINSON
GIBBON'S BRIGADE
DOUGLASS
INDEPENDENT
COMPANY
LEE'S HD QRS
STUART
HILL
H. COLE
COMPTON
ASKIN
WASHINGTON
NEW MARKET
ROAD
WOODED
RANDALL
LEWIS
LINCOLN PINN
MERCHANT
MITCHEL
PETTIT
SMITH
SAW MILL
BROAD
RUN
LANGLEY'S MILL
OPEN
COUNTRY
WIER
BLACKBURN
FORD
CUB RUN
BRANCH
STEEL
RUN

BOARD MAP No 1.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
of

Battle-Grounds of August 28th, 29th, & 30th 1862

in the vicinity of

Groveton, Prince William Co., Va.

Made by the authority of
The Hon. G.W. McCrary, Secretary of War.

Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J.A. Judson, C.E., (A.A.Gen. "King's Division")
and
H.D. Garden, C.E., (late Capt. & A.A.Gen. Confed. Army)

Scale.

PROBABLE POSITIONS OF THE OPPOSING FORCES AT NOON AUGUST 29th 1862, AS INDICATED BY THE INFORMATION THEN IN POSSESSION OF THE UNION GENERALS.



Official Copy
G.K. Warren
Maj. Eng.ʳ & Bvt. Maj. Gen.l U.S.A.

GAINESVILLE

Thoroughfare Gap

Britt

Old Warrenton

Henry Chinn

Old Keister

Thos. Dean

Jas. Masterson

Thos. Mealor

Chris. Wright

Wheeler

Gaskin

Washington

Royal

Smith

NEW MARKET

Steers

Five Forks

Mt Pine

B.F. Lewis

F.M. Lewis

Howson Penn

Wm. Lewis

Jas. Dogan

Merchant

Mitchell

Road

BETHLEHEM CHURCH

Jeffers

Manassas Gap Railroad

Manassas Branch

Centreville Branch

Stuart's Division

Longstreet's Division

Hill's Division

Ewell's Division

Jackson's Division

Pendleton's Division

Reserve Artillery

Reserve Ordnance Train

Reserve Supply Train

Reserve Cavalry

Pope's Headquarters

Sigel's Corps

Reno's Corps

Porter's Corps

McDowell's Corps

Banks' Corps

Kearney's Division

Hooker's Division

Heintzelman's Corps

Sumner's Corps

Franklin's Corps

Burnside's Corps

Cavalry Corps

Pleasonton's Division

Buford's Division

Gregg's Division

Kilpatrick's Division

Custer's Brigade

Porter's Headquarters

Pope's Headquarters

Sigel's Headquarters

Reno's Headquarters

Kearney's Headquarters

Hooker's Headquarters

Heintzelman's Headquarters

Sumner's Headquarters

Franklin's Headquarters

Burnside's Headquarters

Cavalry Corps Headquarters

Pleasonton's Headquarters

Buford's Headquarters

Gregg's Headquarters

Kilpatrick's Headquarters

Custer's Brigade Headquarters

Reserve Artillery Headquarters

Reserve Ordnance Train Headquarters

Reserve Supply Train Headquarters

Reserve Cavalry

BOARD MAP, No 2

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
of
Battle-Grounds of August 28th, 29th, & 30th 1862
in the vicinity of
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Made by the authority of
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Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by
Capt. J.A. Judson, C.E., (late Capt. 4th Mich. Vols. Kings Division)
and
H.D. Garden, C.E., (late Capt. 3rd Ala. Confed. Army)

Scale

NOTE: There will be a descriptive memoir, and a sheet of hill topography to accompany this map.

GENERAL SITUATION AT 4.30 P.M. AUGUST 29TH 1862.

Official Copy
G.K. Warren
Maj. Engrs & Bvt. Maj. Gen. U.S.A.

BOARD MAP No 3.

Engineer Department, U.S. Army.
Bvt. Maj. Gen. A.A. Humphreys,
Brig. Gen. & Chief of Engineers.

MAP
OF

Battle-Grounds of August 28th, 29th, & 30th 1862

in the vicinity of

Groveton, Prince William Co., Va.

Made by the authority of
The Hon. G.W. McCrary, Secretary of War.

Surveyed in June 1878 by
Bvt. Maj. Gen. G.K. Warren, Major of Engineers, U.S.A.
assisted by [illegible] *(late Corps. Confed. Army)*
and
H.D. Garden, C.E., (late Capt. [illegible]

Scale. [illegible] *miles*
[illegible] *feet.*

[illegible] *sheet and a sheet*

NOTE - *There will be a descriptive title accompany this map, exhibiting full topography.*

[illegible] *CH THE 4.30 P.M.*
12.

SUPPOSED MILITARY SITUATION UNDER WHI[illegible]
DER WAS ISSUED AUGUST 29th 18[illegible]

Official Copy
G.K. Warren
Maj. Engr & Bvt. Maj. Gen. U.S.A.